

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY  
AND  
THE BUREAU OF RECLAMATION  
TO**

**ESTABLISH AN AGREEMENT FOR ASSISTANCE  
IN ADMINISTERING AND SERVICING  
FEDERAL CREDIT INSTRUMENTS**

**1. PURPOSE**

This Memorandum of Understanding (MOU) establishes a framework within which the United States Environmental Protection Agency (EPA) and the Department of the Interior, Bureau of Reclamation (Reclamation) (individually a Party or together, the Parties) intend to work together to implement the existing Water Infrastructure Financing and Innovation Act (WIFIA) program, as well as potential new federal credit instruments for the financing of a variety of water infrastructure projects subject to such authority and appropriations being provided to the Bureau of Reclamation.

**2. AUTHORITY**

This MOU is hereby made and entered into by and between Reclamation and the EPA, pursuant to Section 3909(g) of 33 U.S.C., and Section 4301 of America's Water Infrastructure Act of 2018, P.L. 115-270. Reclamation enters this MOU under the authority of the Reclamation Act of June 17, 1902 (32 Stat. 388) and Acts amendatory thereof and supplementary thereto.

The Water Resources Reform and Development Act of 2014, P.L. 113-121 (WRRDA) was signed into law on June 10, 2014. Subtitle C of Title V of WRRDA 2014 contains WIFIA. WIFIA provides authority to the EPA to provide financial assistance in the form of secured loans or loan guarantees for a variety of water infrastructure projects. WIFIA provides the authority to provide financial assistance to carry out eligible projects defined by the act.

- 33 U.S.C. §3902 provides the authority to the WIFIA Program to provide financial assistance to carry out eligible projects defined by the act.
- 33 U.S.C. §3905 defines projects that are eligible for WIFIA Program assistance and include:
  - a project for repair, rehabilitation, or replacement of a treatment works, community water system, or aging water distribution or waste collection facility (including a facility that serves a population or community of an Indian reservation);
  - a brackish or sea water desalination project, including chloride control, a managed aquifer recharge project, a water recycling project or a project to provide alternative water supplies to reduce aquifer depletion;

- a project to prevent, reduce, or mitigate the effects of drought, including projects that enhance the resilience of drought-stricken watersheds; and
- acquisition of real property or an interest in real property - (A) if the acquisition is integral to a project; or (B) pursuant to an existing plan that, in the judgment of the Administrator, would mitigate the environmental impacts of water resources infrastructure projects otherwise eligible for assistance.
- 33 U.S.C. §3906 defines the types of project costs eligible for reimbursement from WIFIA Program assistance:
  - development-phase activities, including planning, feasibility analysis (including any related analysis necessary to carry out an eligible project), revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;
  - construction, reconstruction, rehabilitation, and replacement activities;
  - the acquisition of real property or an interest in real property (including water rights, land relating to the project, and improvements to land), environmental mitigation (including acquisitions pursuant to 33 U.S.C. §3905(8)), construction contingencies, and acquisition of equipment; and
  - capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

In its development of the WIFIA program, EPA established application requirements; developed a process to determine project and obligor credit worthiness; and established project selection criteria for its programs.

### 3. **RESPONSIBILITIES**

Reclamation Responsibilities:

- Reclamation will include information in its Title XVI Program<sup>1</sup> and Desalination Construction<sup>2</sup> Funding Opportunities Announcement (FOAs) about the EPA's WIFIA Program.
- Reclamation will adjust criteria used to allocate Title XVI Program and Desalination Construction project funding to provide additional consideration to projects selected by EPA for WIFIA loan funding.
- Reclamation will identify a lead for coordinating with the EPA that will ensure resources are identified to support the review and selection process for the allocation of WIFIA funding.
- Reclamation will provide financial assistance for eligible projects defined in the authorization subject to authority and appropriations.
- Reclamation will be responsible for developing and establishing project criteria and application requirements and performing programmatic evaluation to identify eligible projects.

<sup>1</sup> Title XVI Reclamation Wastewater and Groundwater Study and Facilities Act, section 1604 (Pub. L. 102-575; 43 USC 390h et seq.), as amended

<sup>2</sup> Water Infrastructure Improvements for the Nation Act of 2016, Title III Natural Resources, Subtitle J California Water, Section 4009 (Pub. L. 114-322)

#### EPA Responsibilities:

- The EPA will provide specific support in administrating and servicing Reclamation federal credit instruments, including determining project and obligor creditworthiness and loan terms; as well as other related activities for loan underwriting, post-closing and debt servicing.
- The EPA will consider adjusting criteria used to allocate WIFIA funding to provide additional consideration to water reuse projects determined by Reclamation to meet feasibility study requirements.
- The EPA will keep “repair, rehabilitate, and replace aging infrastructure and conveyance systems” as a strategic objective and funding priority in future years.
- The EPA will consider adding to its strategic objectives and priorities projects that address drought pursuant to 33 U.S.C. §3905(7), and consider adding programmatic criteria to provide additional consideration for WIFIA funding to WIFIA-eligible WIIN Act<sup>3</sup> storage projects (non-federal cost share), including but not limited to (b)(2)(A) (ii) (quantity), (B)(public and private financing), and (H) (ii)(quantity).

#### Joint Responsibilities:

- The agencies will to work together to identify additional opportunities to align funding processes for WIFIA-eligible projects identified through Reclamation’s existing programs.
- The agencies will work together to advance water reliability for communities in the United States.
- The agencies intend to work together to provide federal credit instruments, subject to authority and appropriations being enacted, in a consistent, efficient, and effective manner, and will seek opportunities to avoid duplication.

This MOU is a voluntary agreement that expresses the good-faith intentions of the Parties, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any Party. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against Reclamation or the EPA, their officers or employees, or any other person. This MOU does not apply to any person outside of Reclamation and the EPA.

This MOU is to take effect upon the signature of both Parties and remain in effect for a period of five years. This MOU may be extended or modified, at any time through the mutual written consent of the Parties. Additionally, a Party may terminate its participation in this MOU at any time by providing written notice to the other Party, at least 30 days in advance of the desired termination date.

All commitments made by Reclamation and the EPA in this MOU are subject to Reclamation receiving the necessary authorities and the availability of appropriated funds and budget

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<sup>3</sup> Water Infrastructure Improvements for the Nation Act of 2016, Title III Natural Resources, Subtitle J California Water, Section 4007 (Pub. L. 114-322)

priorities. Nothing in this MOU obligates Reclamation or the EPA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. Any transaction involving transfers of funds between the Parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

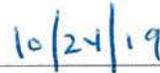
4. **EFFECTIVE TERM OF THE CONTRACT**

This MOU shall become effective upon the completion of the execution of the MOU by both Parties.

**United States Environmental Protection Agency**



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David P. Ross  
Assistant Administrator for Water

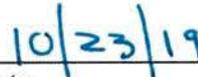


\_\_\_\_\_  
Date

**Department of the Interior, Bureau of Reclamation**



\_\_\_\_\_  
Brenda Burman  
Commissioner, Bureau of Reclamation



\_\_\_\_\_  
Date