



WESTERN STATES WATER COUNCIL

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Web Page: www.westgov.org/hwswc

March 15, 2012

Position #341

Michael L. Connor
Commissioner
U.S. Bureau of Reclamation
1849 C Street N.W.
Washington, D.C. 20240-0001

Dear Commissioner Connor,

On behalf of the Western States Water Council, representing western governors on water policy issues, I am writing to express our concern and questions we have regarding some aspects of the Bureau of Reclamation's proposed changes to the Reclamation Manual as set forth in PEC 09, PEC 05, PEC 09-01, and PEC 05-01.

Specifically, under Reclamation's current policy (WTR P02), project water is considered to be used for "irrigation" so long as it is an untreated, raw water supply applied to any outdoor use regardless of acreage. We believe the current policy is consistent with federal law and appropriately allows cities, irrigation districts, and other water users across the West to rely on and apply water from single purpose "irrigation" projects to lawns, golf courses, and parks, as well as gardens and crops or livestock watering, among other uses, for non-commercial purposes.

Under the Reclamation's proposed changes, deliveries of project water to lots of less than 10 acres for non-commercial irrigation purposes would be assumed to be a "municipal and industrial" (M&I) use subject to the payment of "market rates," which are substantially higher than irrigation rates. Although Reclamation has clarified that these draft policy changes are prospective, they will also apply whenever a contracting action is required. This means that existing users that need to renew, amend, or supplement their contracts will need to do so under the new policy, which would re-classify many uses recognized under state law as M&I even though the state water rights, project purpose, and place of use remain unchanged.

Although Reclamation has indicated that the new policies are intended to provide sufficient flexibility to establish workable rates, most market rates will almost certainly be substantially and possibly prohibitively higher than irrigation rates. As a result, we are concerned that such increases will result in water use changes and water delivery service rates will be unaffordable for many users, including those existing users subject to a future contracting action, and create an inappropriate incentive for secondary water users to move to potable supplies.

We are also concerned that the proposed policy ignores the potential adverse impact on some state-issued water rights in those instances where Reclamation facilities deliver water pursuant to a water right held by a non-federal entity. Specifically, the proposed definitions could result in price increases that force existing users subject to a contracting action to forgo the

full exercise of their state-issued water rights. While we recognize that Reclamation has the right to determine the terms of contracts involving the use of project water, states still retain primacy in establishing and defining rights of use and any policy that impairs the full exercise of existing state-issued water rights abrogates or supersedes state law and the allocation of state water rights.

Lastly, we are concerned about the potential impacts of this policy on market-based water transfers and water sharing arrangements, especially those that involve a conversion of agricultural water to an M&I use. Namely, a more narrow definition for "irrigation" will result in additional steps to formalize conversions from agricultural to non-agricultural uses that may further complicate water sharing efforts. Moreover, many conversions of agricultural water to urban uses qualify as "irrigation" under the current policy, which means that reclassifying these uses to "M&I" could make such conversions financially infeasible in some instances.

In light of the above concerns, the Council supports the Reclamation Manual's current definitions for "irrigation" and "M&I," opposes the proposed changes insofar as they change these definitions, and asks that Reclamation enter into a dialogue with the Council to better define the potential impacts and implications under state water law prior to formalizing any changes to the present manual. Please be assured that nothing in our comments is intended to hinder the ability of Reclamation or of Council member states to carry out water conservation programs or administer water use efficiency activities associated with lots of less than ten acres.

We appreciate the opportunity to comment on this matter and look forward to continuing to build on our longstanding partnership and collaboration with Reclamation.

Thank you again for considering the Council's views on this matter.

Sincerely,

A handwritten signature in black ink that reads "Weir Labatt III". The signature is written in a cursive, slightly slanted style.

Weir Labatt, III
Chair, Western States Water Council

cc: Owen Walker