



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

RECOVERY

RECOVERY OVERSIGHT ADVISORY

U.S. Bureau of Reclamation Rural Water Projects



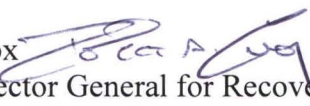
**OFFICE OF
INSPECTOR GENERAL**
U.S. DEPARTMENT OF THE INTERIOR

Memorandum

AUG 15 2011

To: Rhea S. Suh
Assistant Secretary for Policy, Management and Budget

Through: Mary Pletcher
Deputy Director, National Business Center

From: Robert A. Knox 
Assistant Inspector General for Recovery Oversight

Subject: Recovery Oversight Advisory – U.S. Bureau of Reclamation Rural Water Projects
Report No. RO-B-USBR-0109-2010

This advisory, regarding concerns about the Bureau of Reclamation's (USBR) oversight of rural water projects, is part of our ongoing effort to oversee and ensure the accountability of funding appropriated to the U.S. Department of the Interior (DOI) in the American Recovery and Reinvestment Act of 2009 (Recovery Act).

Background

In 2006, Congress passed the Rural Water Supply Act of 2006 (Public Law 109-451) that provided the basis for a rural water program in USBR. Prior to this act, rural water projects were authorized and funded by specific legislation for each project. For example, in the early 1980s, Congress directed USBR to implement 13 independently authorized, single-purpose municipal and industrial water supply projects for rural communities throughout the West. This review focused on several of these projects, which were not incorporated into the rural water program established by Public Law 109-451.

Rural water projects for tribal communities are often implemented under Public Law 93-638, the Indian Self Determination and Educational Assistance Act of 1975, as amended, which is intended to allow Indian people the authority to be self-sufficient and perform functions that the Government would have performed on their behalf, with appropriate Federal oversight to ensure that the funds are properly used for approved and applicable projects. The law contains two significant titles: Title I tribes assume some governmental responsibilities for projects but are subject to more bureau oversight than Title IV tribes, which are designated as self-governing and assume virtually all of the responsibility for project planning and execution. To receive Recovery Act funds, both Title I and Title IV tribes agreed to a funding agreement addendum that provides increased oversight authority for awarding agencies.

Title I and Title IV tribes, as shown in Figure 1, are required to have appropriate property, procurement, and financial management systems in place in order to perform the relevant government functions they are assuming. Tribes receiving Title IV status must have no significant material deficiencies identified in single audit reports required by the Single Audit Act of 1984 for 3 years prior to receiving such status. Inadequate internal systems and controls, or issues found in single audits, increase the risk that projects funded under Public Law 93-638 may not be completed as planned.

	Title I	Title IV
Eligible Tribes	All Federally recognized tribes, including self-governance, can contract under Title I.	Only self-governance tribes can contract under Title IV.
Regulations	Statutory requirements are contained at 25 U.S.C. § 450 et seq.; applicable regulatory requirements are found at 25 C.F.R. Part 900.	Statutory requirements are contained at 25 U.S.C. § 458aa et seq.; applicable regulatory requirements are found at 25 C.F.R. Parts 1000 and 1001.
Financial Instruments	The financial instrument can be a contract, cooperative agreement, or grant as negotiated with the funding agency.	The only financial instrument under Title IV is the Annual Funding Agreement negotiated with the funding agency.

Figure 1. Tribal contracting regulations under Title I and Title IV.

Scope and Methodology

We reviewed selected rural water projects involving seven recipients (see Figure 2) to assess USBR's administration and oversight efforts. During our evaluation, we reviewed the initial project authorizations, applicable regulations, procedures for use of Public Law 93-638 agreements, USBR policies and procedures, information on the USBR Rural Water Program, specific Recovery Act funding agreements, and selected recipient financial information.

We also conducted in-person interviews with USBR budget, contracting, and project management personnel in the Great Plains and Lower Colorado regional offices, the Denver, CO, office, and the Washington, DC, office. In addition, we interviewed officials at the Office of Self-Governance in Washington, DC, and state-level regional water district officials, contractors, subcontractors, laborers, and tribal officials from the Chippewa Cree (Rocky Boy's Indian Reservation), Standing Rock Sioux, and Three Affiliated Tribes.

After we completed our initial review work, we discussed potential findings with USBR officials in a meeting on November 10, 2010. Participants in the meeting included USBR Denver staff, as well as personnel in the Great Plains regional office and the Washington, DC, office via telephone.

Award Recipient (93-638 designation as applicable)	Project Description	Sub- Contracts Awarded	Award Amount	Date and Public Law Authorizing Project
Garrison Diversion Project (5 recipients)				1986 Public Law 99-294
South Central Regional Water District* (non-tribal) (recipient)	Water intake and treatment plants	7	\$20 Million	
North Dakota State Water Commission* (non-tribal) (recipient)	Construction of pipeline and water treatment plant	2	\$12 Million	
Spirit Lake Tribe (Title I tribe) (recipient)	Rural water supply system, water treatment plant design, pilot plant study, and well field expansion/investigation	1	\$3.6 Million	
Standing Rock Sioux Tribe (Title I tribe) (recipient)	Construction of water system	3	\$19 Million	
Three Affiliated Tribes (Title I tribe) (recipient)	Construction of water system	2	\$6.4 Million	
Gila River Indian Community (Title IV tribe)	Construction of the Pima-Maricopa irrigation project	6	\$36 Million	1968 Public Law 90-537 (USBR and tribe agreed to terms in 1992)
Rocky Boy's Chippewa Cree Construction Company (CCCC) (Title IV tribal entity)	Project management, design and construction of the intake superstructure core pipeline segments	20	\$27.5 Million	2002 Public Law 107-331

Figure 2. Rural Water Project Recipients Included in this Review. * Garrison Conservancy District

We met with the Great Plains regional staff a second time on December 17, 2010, to further discuss the findings and their responses. The regional director, assistant regional director, audit liaison, Native American affairs specialist, contract specialist, budget officer, USBR Recovery Act coordinator, and a solicitor were in attendance. Participants from the USBR Dakota and Montana area offices, including the area managers, chief of the rural water supply program, and the relevant project managers, also attended. USBR provided additional documentation and information in early 2011 for our consideration.

Findings

We found several significant issues with USBR's oversight of Recovery Act rural water projects, including lack of policy and noncompliance with procedures, engineering costs, inadequate project monitoring, and serious acquisition issues on specific projects.

Policy and Procedures

USBR officials indicated that bureau policies and procedures regarding management of Public Law 93-638 agreements were lacking. The officials stated that they would welcome such policies and procedures that could guide the regional office staff, who currently relies upon individual experience to execute and administer the agreements. This practice creates inconsistency across regions.

Specifically, the 2010-09 Department of the Interior Acquisition Policy Release (DIAPR) regarding Public Law 93-638 contracts states, "Bureaus with authority to award these contracts and agreements must establish supplementary procedures to delegate authority and establish minimum training, experience, and continuing education requirements [for bureau contracting officers]." We found that USBR does not have minimum training, experience, or continuing education requirements in place.

We found that the Great Plains region is not following the established practices outlined in the USBR manual for developing independent government cost estimates (IGCE) for construction projects. The manual states, "IGCE's are prepared to establish the estimated cost of performing specific work called for in the bidding schedules of the solicitations for a particular supply, equipment or construction contract. They are used to assess whether bids submitted by the offerors are fair, reasonable, and acceptable." The manual further states that "IGCEs will be prepared in as much detail as though the government were competing for the award." We found the agreements in place under the Garrison Diversion Rural Water Project (Garrison) did not have an IGCE and that the Architecture and Engineering (A&E) contractor, hired by the individual tribes or state entities, was developing the cost estimates. In contrast, we found that the Lower Colorado Region did require IGCE's for the Gila River project. We were told by one official there that preparing IGCE is prudent business practice to ensure best value to the government dollars; in this region, IGCE's are prepared for all projects expected to exceed \$2,500.

USBR responded to our concern by stating that IGCEs were not performed because “it is redundant, provides little added value and is costly to develop” and that the Standing Rock Sioux Tribe’s A&E firm “has done an excellent job in developing Budgetary Estimates and Engineers Estimates that compare very favorably with the eventual Bid Price.” This does not negate the need for an IGCE, however, especially since the A&E firm is paid a percentage of the project costs that they develop, and USBR is not following its own policies.

During the December meeting, one USBR official stated that the reason a modification for the Rocky Boy’s project took 9 months to complete was because the bureau was waiting for the Chippewa Cree Construction Company (CCCC) to install pipe and provide the actual installation cost. An IGCE would have provided a reasonable estimate of these costs and avoided the delay in modifying the agreement. Furthermore, the Government would not have had to rely on cost figures derived by a recipient.

The USBR Lower Colorado regional office administers the Gila River rural water project differently. This project is executed through a Title IV agreement, but we noted significant bureau involvement and assistance to the tribe. We found that staff in this region were following the USBR manual by preparing IGCEs for project elements expected to cost as little as \$2,500 because as one official stated, “it is the most important part, because it determines if the cost you pay is reasonable.”

Engineering Costs

We found that for three of five agreements for the Garrison project, A&E firm fees were based on a percentage of the cost of the projects (see Figure 3). We learned that the fee structure provides no incentive for detailed scopes since a broader less-defined scope typically yields larger fees as designs are refined. In contrast, on the remaining two projects, which were contracted with other state and local entities, the A&E firm was paid for its costs based on negotiated hourly labor rates.

Recipient	Agreement Date	Funding
North Dakota State Water Commission	July 1985	Hourly rates breakdown
Spirit Lake Tribe	November 2008	Percentage of award
South Central Regional Water District	February 2010	Hourly rates breakdown
Standing Rock Sioux Tribe	October 2001	Percentage of award
Three Affiliated Tribes	August 2001	Percentage of award

Figure 3. A&E firm fees for the Garrison project.

USBR responded to our concern about A&E firm fees, stating that the “USDA [U.S. Department of Agriculture] Rural Development (RD) has provided guidance for estimating

engineering fees as a percentage of construction contract costs,” and the A&E firm had “previously been using this method for working on [rural water] project[s]...this fee method is considered reasonable.” We contacted staff at the Garrison Diversion Conservancy District, who stated that they changed from a percentage-based A&E fee approach to an hourly labor rate basis and experienced lower overall costs.

Project Monitoring

Scopes of Work

At the Garrison project, we found that USBR wrote the initial scope of the project too broadly. For example, USBR stated that a water treatment plant would be constructed but did not include details of square footage or capacity. This increases the likelihood that the project will incur numerous change orders with corresponding cost increases and increased funding requirements.

At the Rocky Boy’s project, we found confusion between USBR and CCCC, the Public Law 93-638 tribal entity receiving Recovery Act funds, regarding the project scope. The original project scope, as documented in the funding agreement, was to provide \$20 million to complete an intake superstructure and 13 miles of pipeline. On August 4, 2010, a CCCC official told us that the \$20 million was never expected to cover the entire project scope and that additional funds from the State of Montana were essential to complete the 13 miles of pipeline.

Upon further inquiry, we discovered that a notice to significantly change the original project scope was documented via a memorandum to USBR from CCCC. The January 28, 2010 memorandum described a reduction in the miles of pipeline to be completed from 13 miles to 8.18 miles, a 37 percent reduction, predominantly because of USBR’s requirement to use steel instead of ductile iron pipe, which increased the cost to complete 1 mile of pipeline from \$1 million to \$1.59 million. Even though this correspondence alerted the bureau of scope changes in January 2010, a relevant modification was not completed until September 9, 2010.

Furthermore, we noted that CCCC prepared a plan on August 10, 2009, that specified steel pipe. USBR stated that this material specification was not included in the funding modification signed on September 21, 2009, because the modification had been sent forward for higher-level bureau review and could not be easily revised at that point.

Profit

While reviewing the expenditure information provided by CCCC, we determined that the corporation was charging 10 percent profit on the pipeline project without USBR’s awareness or concurrence. As of June 30, 2010, this amounted to about \$408,000. CCCC officials stated that the 10 percent profit was negotiated between USBR and CCCC after months of discussion, but, when asked about the profit, USBR stated that it had not been negotiated for the Recovery Act portion of the project and that profit would be determined near the end of the project after total costs and remaining funds were determined.

We also determined CCCC was charging profit inconsistently during this project. At one point during project execution, CCCC ceased taking profit on the cost of pipeline materials because a company official stated it would be too much to charge. We also found that the tribe was charging direct administrative costs, amounting to about \$201,000 through June 30, 2010.

In the December 17, 2010 meeting, we asked USBR whether profit is allowable to CCCC. We were referred to 25 C.F.R. 900.127 (c)(4), which states that profit is allowed to the “contractor that carries out the construction contract.” Since CCCC is the Public Law 93-638 tribal entity receiving funds, profit is allowable to any contractors they engage, but based on our understanding of the above regulation, it is not clear that profit is allowable to CCCC as the Title IV recipient.

USBR noted that the profit indicated on the CCCC financial report was likely a misstatement of allowable costs. The potential misstatement as profit, combined with the company’s inconsistency in charging this cost, raises concerns about the adequacy of CCCC’s financial management system. Since USBR had not seen the tribal financial statements, it was unaware that profit was defined as a cost line item on their statement of expenses. This further illustrates our concern about oversight. In response, USBR developed a plan to work with CCCC to correct accounting terminology and ensure that their financial management system meets regulatory requirements. USBR stated that the plan would be implemented in early 2011.

Additional Fees

We found additional costs and fees associated with tribal rural water contracts. These include the Tribal Employment Rights Office (TERO) fees, USBR oversight fees, and tribal Environmental Protection Agency (EPA) fees. The TERO and EPA offices were established by tribal resolution to provide for tribal employment and environmental cleanup during and after construction on tribal lands. The fees are not standardized, vary from tribe to tribe, and range from 1 to 5 percent depending on the approved tribal resolution. At the Rocky Boy’s project, we noted that TERO fees were being collected for work performed off of reservation lands. While the tribe has no authority to require such fees off-reservation, USBR stated that if the tribe and their contractors negotiated these fees, they were acceptable. In this case, however, the contractor, CCCC, is the Title IV entity controlled by the tribe. In effect, one tribal entity is paying another tribal entity TERO fees for work completed off of the reservation. As of June 30, 2010, \$412,000 had been paid in TERO fees. No EPA fees were paid on this project. USBR was unaware of these fees and did not negotiate with the tribal entity to eliminate them.

When we asked about the application of TERO fees to the Garrison project, USBR told us that these charges are not direct costs for Recovery Act projects, and it has limited information on them. USBR staff did not follow-up to determine the amounts of TERO fees or how they are assessed and paid. All of these non-construction fees reduce funds that could be used to build facilities or lay pipelines and, therefore, extend project milestones while increasing costs.

We asked both USBR and BIA to provide guidance on TERO fees, and neither was able to justify these fees as an allowable expense on Federally-funded contracts. A BIA official told

us that TERO fees are negotiated and could be eliminated from contracts if the parties agreed. At the Gila River project, we found that the Title IV tribe decided not to collect TERO fees on their Recovery Act project because they wanted as much money as possible to be used to complete the project. We were not provided specific legal authority to support the applicability of a tribe's TERO outside the boundaries of its reservation, which supports our contention that USBR should have been involved in negotiations about TERO fees on Recovery Act rural water projects.

We found that USBR is also retaining funds from rural water projects for oversight. For each of the five Public Law 93-638 contracts or agreements with tribal organizations on the Garrison project, the Great Plains region retained \$100,000 for the "performance of inherently-Federal functions and contract oversight activities." In addition, \$140,000 was retained to provide "Reclamation Oversight" on the Rocky Boy's Rural Water project. While we did not assess how USBR is specifically expending these oversight funds, it seems that USBR has the financial resources to address the oversight concerns we identified in this review.

Specific Contract Issues

We identified several specific contract issues on rural water projects, including work on some projects that began before signed agreements were in place, and that the contract with the A&E firm performing all of the work on the Garrison project has not recently been recompleted.

All agreements we reviewed from the Great Plains office were signed after the projects had begun work. In the instance of the Garrison project, tribal recipients were obligating funds with their contractors, such as the A&E firm, before they had a signed agreement with terms and amounts of funding from USBR. In response to our concerns, USBR noted that such pre-award costs are allowable and not unusual. Further, USBR noted that this practice was critical for Recovery Act projects given the law's mandate for "successful and timely completion of contracted activities."

We found that all of the A&E work for the Garrison projects is being managed by the same A&E firm. We reviewed all five tribal contracts with the A&E firm and noted they do not have an expiration or renewal date. Some of these contracts have been in place for decades without being rebid to determine if the Government and tribes are receiving the best value for the work performed or obtaining the most qualified firm. In one instance, the original contract initiated in 1994 was renewed, though not rebid, in 2010 solely at the request of the U.S. Department of Agriculture, and another has been in place since 1985 and has never been resolicited.

In response to our concern regarding the length of some of the contracts held between the tribes and the A&E contractor, USBR provided several valid reasons as to why the contracts were not recompleted for the Recovery Act tasks. The most compelling response was the amount of time it would have taken to initiate new contracts, when valid contracts were already in place. We understand that tight timelines for obligating Recovery Act funds created challenges for all DOI bureaus, yet decades-long contracts without recompetition can create situations where relationships become too lax and Government funds become more susceptible to fraud, waste, and mismanagement.

Furthermore, an A&E firm handles the entire procurement process for the tribe, which includes managing the contracting process, providing specification development, soliciting bids, participating in bid opening with tribal officials, and making recommendations on selection for the Garrison project. As a result, the firm is in a position to manipulate the competitive bidding process and steer bids to favored contractors. We also found that the A&E firm managed several small scale pilot projects to validate the technical designs. The contractors that completed the pilot projects were selected non-competitively via an invitation letter from the A&E firm. These firms were thus given a subsequent unfair competitive advantage when bidding on the full-scale implementation of the pilot project processes.

Recommendations

We recommend that USBR:

1. Develop and implement consistent policies and procedures among regions for oversight of Public Law 93-638 rural water contracts, including training requirements for USBR staff.
2. Instruct regions to comply with existing procedures regarding preparation of IGCEs for Public Law 93-638 rural water contracts or adequately document reasons IGCEs were not prepared for specific projects.
3. Direct Great Plains region to review all existing tribal rural water contracts with A&E firms to ensure prices provide incentives for cost reductions and the most favorable terms to the tribes.
4. Direct Great Plains region to ensure tribal rural water contracts reflect the most current project scopes of work.
5. Direct Great Plains region to provide training and guidance to tribal entities with rural water projects to ensure financial and procurement management systems adequately and accurately track and report project costs.
6. Develop and implement consistent processes for regions to negotiate with tribes having rural water projects to ensure project fees (TERO, environmental, administrative, profit) are reasonable and appropriate.
7. Direct Great Plains region to review tribal rural water A&E contracts to identify long-standing relationships and encourage tribes to resolicit such contracts periodically to allow for open competition.

USBR reviewed these recommendations and agreed that many of them make good business sense. USBR also noted that many of the recommended practices, policies, and procedures were in place but needed to be more rigorously and consistently applied. Finally,

USBR noted it is “in the process of working with the Regions to implement these recommendations more consistently.”

Please provide a written response to this advisory within 30 days of receipt detailing the corrective actions to be implemented to meet our recommendations, as well as targeted completion dates and the title(s) of the official(s) responsible for implementation. We will post this advisory on our Web site (www.doiioig.gov/recovery/) and Recovery.gov. Information contained in this advisory may also be included in our semiannual reports to Congress. We performed our work in accordance with the applicable Quality Standards for Inspection and Evaluation adopted by the Council of the Inspectors General on Integrity and Efficiency. Please contact me, if you have any questions.

cc: Deputy Secretary, U.S. Department of the Interior
Director, Office of Executive Secretariat and Regulatory Affairs
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Acting Director, Office of Financial Management
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