



# United States Department of the Interior



BUREAU OF RECLAMATION  
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Executive Committee  
Middle Rio Grande Endangered Species Collaborative Program  
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Subject: Middle Rio Grande Endangered Species Collaborative Program (Program) non-federal cost share under 2009 Omnibus Appropriations Act

Dear Executive Committee:

The Bureau of Reclamation seeks to clarify its view of the non-federal cost share language set forth in the federal 2009 Omnibus Appropriations Act (Act) in order to provide the Middle Rio Grande Endangered Species Collaborative Program Executive Committee (Executive Committee) a better understanding of the funding obligations of non-federal Program signatories moving forward in support of the Program's new approach for reframing cost-share to signatory contributions.

## Background:

The Act was passed in 2009 as part of a federal appropriations package, and, as set forth below in subsection (c), requires a non-federal cost share when Reclamation (acting through the Secretary of the Interior), in collaboration with the Executive Committee, exercises its discretion to "enter into any grants, contracts, cooperative agreements, or other agreements that the Secretary determines to be necessary to comply with the 2003 Biological Opinion or any related subsequent biological opinion or in furtherance of the objectives set forth in the collaborative program long-term plan."

In addition, subsection (e)(1) of the Act requires that, when Reclamation enters into such funding agreements, "the non-Federal share of activities carried out under subsection (c) (other than an activity or a cost described in subsection (d)(1)) shall be 25 percent. The non-Federal cost share shall be determined on a programmatic, rather than a project-by-project basis."

## Issue:

At the July 28, 2021, Executive Committee Meeting, a proposal for reframing cost-share to signatory contributions was approved. The Program will compile information on signatory contributions, including voluntarily provided costs related to activities that contribute to Program operations or work towards achieving its guiding principles (i.e., mission, goals, and objectives).

To that end, Reclamation provides the following clarification for the first non-federal cost-share requirement under subsection (c) of the Act. It is important to understand the history of the two

biological opinions at issue. The 2016 Biological Opinion differs significantly from the 2003 Biological Opinion, both in its approach to water management and species protection and in its approach to the Program's Executive Committee, such that Reclamation views the 2016 Biological Opinion as a new replacement biological opinion and not a "related, subsequent biological opinion" to the 2003 Biological Opinion, as contemplated by the Act.

Additionally, the 2016 Biological Opinion specifically identifies discrete water management responsibilities of four primary entities, federal and non-federal: Reclamation, the U.S. Bureau of Indian Affairs, the Middle Rio Grande Conservancy District, and the State of New Mexico, with specific conservation measures identified for each. And, while the 2016 Biological Opinion recognizes the important contributions of the Program in concerning the development of science and other implementing activities, the 2016 Biological Opinion is no longer tied to the Program Executive Committee for collaboration and compliance in the same way that the 2003 Biological Opinion was structured.

In regard to the second cost-share funding requirement under subsection (c) of the Act, requiring a 25 percent non-federal cost share for Reclamation-funded activities undertaken in furtherance of the objectives of the Collaborative Program long-term plan, this will be determined by Reclamation on a programmatic—and not project-by-project—basis. Subsection (e)(2) of the Act states, "The Non-Federal share ... may be in the form of in-kind contributions, the value of which shall be determined by the Secretary in consultation with the executive committee." In summary, Reclamation interprets the 2009 Omnibus Appropriations Act as continuing to require a 25 percent non-federal cost share for Reclamation-funded agreements in furtherance of the objectives of the Collaborative Program Long-Term Plan and consistent with the Program's recently approved approach for reframing cost-share to signatory contributions, but not for Reclamation-funded agreements for activities solely undertaken in compliance with the 2016 Biological Opinion.

Therefore, in keeping with the proposal to re-frame signatory cost-share contributions approved by the Executive Committee, Reclamation will continue to request non-federal entities report their Program activities on an annual basis, as part of all signatories' reporting that contributes to Program activities. Non-federal entities shall report this information in the Program's Science and Adaptive Management Information System (SAMIS). These activities include, but are not necessarily limited to, Program activities, such as active participation in Collaborative Program committees, groups, workshops, and scientific activities such as studies, monitoring, data collection, habitat restoration, research, etc. The activities reported into the SAMIS would comply not only with the Collaborative Program long-term plan, but also in keeping with the 25-percent non-federal cost share requirement set forth in subsections (c) and (e)(2) of the Act. *See* Act, subsection (e)(2).

If you have any questions or comments, please contact Lynette Giesen at (505) 462-3544 or email [lgiesen@usbr.gov](mailto:lgiesen@usbr.gov). For Text Telephone Relay Service access, call the Federal Relay System Text Telephone (TTY) number at (800) 877-8330.

Sincerely,

Jennifer Faler, P.E.  
Area Manager