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Contracting for Water from a Federal Project

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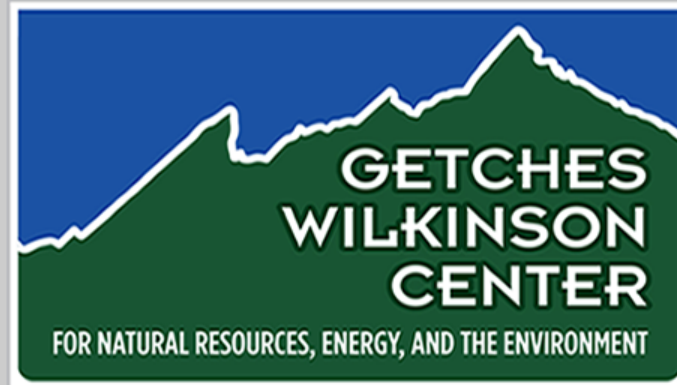
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WATER RESOURCES ALLOCATION:
LAWS AND EMERGING ISSUES

Contracting for Water from a Federal Project

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I. Introduction

- A. Several Federal agencies administer programs designed to carry out missions concerning navigation, flood control, stream channel maintenance and improvements, irrigation water supply, hydroelectric power generation and distribution, water supply for municipal and industrial uses, watershed management and conservation. Chief among these agencies are the Federal Water and Power Resource Service (Bureau of Reclamation) and the U. S. Army Corps of Engineers. Principal attention is devoted to the Federal Water and Power Resource Service, but programs of the Corps of Engineers and other agencies are explored, as well.
- B. At public expense a good deal of water has been developed at various Federal projects, notably in the West. Much of this water has been made available for private use on a reimbursable basis through contracts with the developing or sponsoring agency. Additional supplies are still available for purchase for use by contract. The practicing lawyer can assist his client in identifying sources of potential supply and guiding the client through the necessary procedures for obtaining contractual rights to use the water if he understands the functions

of the Federal agency involved, its authority to contract, the nature of the commodity or service it can deliver and the procedures required of it or by it.

II. Federal Agencies and Federal Programs.

- A. Federal Water and Power Resources Service (Reclamation Projects).
- B. U. S. Army of Corps of Engineers (Flood Control and Multi-purpose Projects).
- C. Department of Agriculture (Soil and Water Conservation; Rural Development; Grants for Water and Waste Disposal Projects).
- D. Related Programs (E.g. former H.U.D. program under Housing and Urban Development Acts).

III. The Federal Reclamation Program in the 17 Western States and Opportunities for Private Use of Project Water.

A. Brief overview of the Program.

- 1. Historical background and Development:
The Act of June 17, 1902, 32 Stat. 388, 43 U.S.C. 372 et seq., and Acts "amendatory thereof or supplementary thereto."
- 2. Purposes of the Program.
 - a. Agricultural water.
 - b. Municipal & Industrial (M&I) water.
 - c. Hydroelectric power.

- d. Recreation (including fish and wild-life).
 - e. Flood control.
3. Significant amendments, supplemental and related Acts.
- a. 1911 Warren Act, 36 Stat. 925, 43 U.S.C. 523.
 - b. 1924 Fact Finders Act, 43 Stat. 702, 43 U.S.C. 412.
 - c. 1936 Flood Control Act, 49 Stat. 1570, 33 U.S.C. 701a-h.
 - d. 1939 Reclamation Project Act, 53 Stat. 1187, 43 U.S.C. 485-485K.
 - e. 1944 Flood Control Act, 58 Stat. 887, 33 U.S.C. 701-1.
 - f. 1946 Fish and Wildlife Coordination Act, 60 Stat. 1080, 16 U.S.C. 661.
 - g. 1956 Small Reclamation Projects Act, 70 Stat. 1044, 43 U.S.C. 422a-1.
 - h. 1958 Water Supply Act, PL 85-500, 72 Stat. 319, 43 U.S.C. 390b.
 - i. 1958 Fish and Wildlife Coordination Act, PL 85-624, 72 Stat. 563, 16 U.S.C. 661.
 - j. 1965 Federal Water Project Recreation Act, PL 89-72, 79 Stat. 214, 16 U.S.C. 4601.

k. 1969 N.E.P.A., PL 91-190, 83 Stat. 852,
42 U.S.C. 4321 et seq.

4. Specific Projects Authorizations.
- B. Relationship to Flood Control Programs: Overlapping Purposes and Functions of FWPRS and Corps of Engineers.
- C. Project Authorization: Benefit Cost Ratios, Cost Allocations, Reimbursable and Non-reimbursable Uses and Costs, Repayment.
- D. Acquisition of Project Water Rights.
 1. Nature of right.
 2. Ownership - water users' organizations and water districts.
- E. Allocation and Use of Project Water Rights.
 1. Non-reimbursable Uses: navigation, flood control, and recreation, including fish and wildlife.
 2. Reimbursable Uses: power, irrigation, municipal and miscellaneous water supply, including domestic and industrial uses.
 3. Irrigation preference and the evolution of changes in use.
 4. Municipal and industrial uses.
 5. Power uses.
 6. Uses within and outside project areas.
 7. Operating policies and criteria:
Congressional documents.

- F. Types of Contracts for Use.
 - 1. Repayment contracts.
 - 2. Water Service contracts.
 - 3. Temporary and permanent contracts.
 - 4. Subcontracts.
- G. Identity and Eligibility of Parties.
- H. Consideration: Repayment or Service Fee.
- I. Term of Use and Payment.
- J. Rights of Contractors.
 - 1. Right of use of project water.
 - 2. Right of selling or leasing.
 - 3. Extension or renewal.
- K. Conditions and requirements of contracts.
 - 1. Excess land law and acreage limitations.
 - 2. Appurtenance of water to land.
 - 3. Residence and cultivation requirements.
 - 4. Federal policy provisions, including
N.E.P.A.
- L. Relationship of contractors to other water users.
 - 1. Users under state law systems - priority.
 - 2. Other contractors - apportionment.
- M. Contract Administration and Compliance.
- N. Rights of Contractors against the United States.
 - 1. Sovereign immunity and other limitations.
 - 2. Federal jurisdiction.
 - 3. Redress: Irrigation claims, contract

claims, tort claims.

O. Contract Negotiation procedures.

1. Public notice.
2. Public participation.
3. Non-negotiable items.

IV. Other Federal Programs

A. Multipurpose projects of the Corps of Engineers.

1. Relationship to reclamation program.

B. U. S. Department of Agriculture Programs.

C. Other Programs.