



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

REIMBURSEMENT OF A-CANAL HEAD GATES AND FISH SCREENS ON THE KLAMATH PROJECT

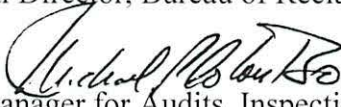


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SEP 27 2016

Memorandum

To: David Murillo
Mid-Pacific Regional Director, Bureau of Reclamation

From: Michael P. Colombo 
Western Regional Manager for Audits, Inspections, and Evaluations

Subject: Management Advisory – Reimbursement of A-Canal Head Gates and Fish
Screens on the Klamath Project
Report No. 2015-WR-080-C

The U.S. Department of the Interior, Office of Inspector General conducted an audit of the Bureau of Reclamation's (USBR) Klamath Basin Water User Mitigation Program (WUMP) to determine whether USBR had the legal authority for a cooperative agreement with the Klamath Water and Power Agency to administer the WUMP and whether related expenditures were allowable. During the audit, we found that USBR did not secure repayment of millions of dollars of costs incurred to design, construct, and operate and maintain new head gates and fish screens at the A-Canal diversion within the Klamath Project. Because this matter is outside the objective and scope of our audit and will not be included in our final report, we are providing you with this management advisory so that you can fully review the matter and take corrective action.

Finding

On November 29, 1954, USBR and the Klamath Irrigation District (KID) entered into an amendatory contract (No. 14-06-200-3784) that transferred operations and maintenance (O&M)¹ responsibilities for the Klamath Project's A – G Canals (transferred works) to KID, effective January 1, 1955. Under terms of the contract, KID accepted responsibility for the costs of all O&M, including replacements of the transferred works, and agreed to promptly make any and all repairs deemed necessary by the Secretary of the Interior. In the event KID failed to perform necessary repairs in a timely manner, the contract allowed USBR to take back control of the transferred works, make suitable repairs, and charge the cost of such repairs to KID.

In April 2003, USBR completed installation of new head gates and a fish screen complex at the head of the Klamath Project's main diversion canal (the A-Canal). The new head gates and fish screens were designed to keep endangered and threatened fish species in the river and out of Klamath Project irrigation canals. For reasons we could not determine, USBR reassumed control of the A-Canal, constructed the replacement facilities itself, and continued to operate and

¹ USBR defines operations as "activities related to the normal performance of the functions for which a facility or item of equipment is intended to be used." Maintenance is defined as the "upkeep of constructed facilities and structures and capitalized equipment that is necessary to realize the originally anticipated useful life of a fixed asset."

maintain the head gates and fish screens until February 9, 2011, when it once again returned O&M responsibility to KID. Under the terms of its contract, USBR should have charged the cost of the replacements to KID, as they fell in the O&M category.

USBR has not secured repayment of its costs to design, construct, and operate and maintain the A-Canal head gates and fish screens. USBR, however, received preliminary advice from the Office of the Solicitor (SOL) that it is appropriate for USBR to recover these costs. A draft SOL document titled “Disposition of Tulelake Incidental Revenues,” dated January 14, 2009, stated: “Absent statutory direction to the contrary, fish screens and fish passage costs at the Klamath Project are [O&M] costs, because they were incurred to remedy conditions brought about by the operation of the project facilities and to keep the project operating as a ‘going concern.’”² A USBR official told us that USBR supported efforts to have KID’s repayment obligation addressed as part of the proposed Klamath Basin Restoration Agreement (KBRA), and therefore, did not pursue contract negotiations for repayment of the costs.

On February 18, 2010, several interested parties in the Klamath region came together and signed the KBRA. The stated goals of the KBRA included environmental sustainability and establishment of reliable water and power within the Klamath Project. KBRA § 15.4.4(A)(ii) would have resolved all existing disputes concerning repayment by eliminating all debt within the Klamath Project, including the A-Canal O&M. In an email dated October 7, 2010, an attorney in the Regional Solicitor’s office confirmed that “throughout the entire negotiation [of the KBRA], and as expressly stated in ‘ii,’ the agreement in the KBRA is that all debt would be erased, whether from O&M or construction, capital, etc. upon passage of the authorizing legislation.” On December 31, 2015, the KBRA failed to pass through Congress, which resulted in the expiration of its conditions.

We did not attempt to identify USBR’s total cost to design and construct the replacement A-Canal head gates and fish screens or its cost to operate and maintain these facilities from 2003 through 2011, as such an effort would have been well beyond the objective and scope of our audit. From limited documentation that was available to us, however, it appears the design and construction costs alone represent between \$16 million and \$20 million of costs that should be recovered from KID.

Recommendations

We recommend that USBR:

1. Identify USBR’s total costs to design and construct the A-Canal head gates and fish screens;
2. Identify USBR’s total cost to operate and maintain the A-Canal head gates and fish screens from 2003 to 2011;

² *Casitas Municipal Water District v. United States*, 543 F.3d 1276, 1285 (Fed.Cir. 2008): Casitas Municipal Water District (Casitas) sued the United States over the costs of fish ladders USBR installed to avoid violations against the Endangered Species Act. Casitas argued that fish ladders constituted a construction obligation, which they were not required to pay for. The U.S. Government claimed that the fish ladders were part of an O&M cost allocated to Casitas under an existing contract. The courts ruled in favor of the United States and concurred that this type of project is O&M.

3. Promptly notify the Klamath Irrigation District of its obligation to repay the cost to design, construct, and operate and maintain the A-Canal head gates and fish screens and the total amount that must be repaid, as determined by USBR in Recommendations 1 and 2; and
4. Negotiate and establish a repayment contract with the Klamath Irrigation District to secure timely repayment of USBR's cost to design, construct, and operate and maintain the A-Canal head gates and fish screens, as determined by USBR in Recommendations 1 and 2.

Response to Report

Please provide us with your written response to this report within 30 days. The response should provide information on actions taken or planned to address the recommendations, as well as target dates and title(s) of the official(s) responsible for implementing these actions. It should also clearly indicate the dollar value of questioned costs that you either plan to allow or disallow. Please send your response to aie_reports@doioig.gov. If you have any questions regarding this report, please contact me at 916-978-5653.

The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit, inspection, and evaluation reports issued; actions taken to implement our recommendations; and recommendations that have not been implemented.

We did not conduct this review in accordance with standards, such as Government Auditing Standards issued by the Comptroller General of the United States or the Quality Standards for Inspection and Evaluation issued by the Council of the Inspectors General on Integrity and Efficiency. We did, however, plan and perform work to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions and recommendations.

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