



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

911 NE 11<sup>th</sup> Avenue  
Portland, Oregon 97232-4181

In Reply Refer to:  
FWS/R1/AFR

JAN 27 2010

Mark Lere  
Habitat Section, Fisheries Bureau  
Montana Fish, Wildlife and Parks  
P. O. 200701  
Helena, Montana 59620-0107

Dear Mr. Lere,

The enclosed reauthorization of the Fisheries Restoration and Irrigation Mitigation Act (FRIMA) dated March 30, 2009, under the Omnibus Public Lands Management Act made several changes to the FRIMA Program (Program) and extends the authorization of FRIMA until 2015. Although no funds were appropriated by Congress to the Program in FY 2010, the Service, in consultation with the Department's Office of the Solicitor, has determined that the new legislative authority applies to unobligated and unexpended balances received under prior-year appropriations, and to subsequent future appropriations. This letter clarifies key changes in the cost sharing and administrative expense provisions of FRIMA.

Under section 7(c)(2)(A) and (B), the Secretary of the Department of the Interior may now accept "...without further appropriation and without fiscal year limitation..." contributions from the Bonneville Power Administration (BPA). BPA contributions, either directly or through a grant to a partnering entity involved in projects, will be credited toward the Program's minimum 35 percent non-Federal cost share requirement for projects carried out on land or at a facility that is not owned by the Federal government.

Section 10 clarifies administrative expenses associated with the Program. Annual Service and State administrative expenses cannot exceed 6 percent of any appropriated funding. The Service is required to share 50 percent of any funding designated for Program administrative expenses equally with the four participating States. The Service's share can be used to fund the cost of a full-time employee to manage the Program.

Section 10 also clarifies States' use of administrative funds for technical assistance relating to the Program implementation. Administrative funds can be used to cover staff and travel expenses associated with: 1) arranging meetings to promote the Program to potential applicants; 2) assisting applicants with the preparation of applications seeking funding; and 3) visiting project sites to provide technical assistance, if requested by the applicant, both prior to or following funding awards.

Although the Service has not received congressional appropriations for the Program since 2007, unobligated or recovered funding balances remain in several States due to previously-funded projects that either could not be completed or were finished under-budget. In FY 10, the Service would like to see these remaining balances obligated. Accordingly, we request that by May 3, 2010, each State develop a budget for any remaining funding and submit a list of projects to the Service for approval with the understanding that 3% of any remaining balances in a given State can be dedicated to administrative expenses. It is not our intent to re-apportion allocations from previous year's budgets.

If you have any questions, between please contact me at 503-872-2763.

Sincerely,

A handwritten signature in black ink that reads "Val M. Furr". The signature is written in a cursive, flowing style.

Chief, Division of Fisheries Habitat and Restoration

Enclosure

cc:

Fish Screen Oversight Committee Chair, Columbia Basin Fish and Wildlife Authority

ARD-AFR, Region 6

ARD-AFR, Region 8

WO, National Fish Passage Program Coordinator

AFA, F Caslick

B&F, T Ballard

PUBLIC LAW 106-502—NOV. 13, 2000  
FISHERIES RESTORATION AND IRRIGATION  
MITIGATION ACT OF 2000

114 STAT. 2294 PUBLIC LAW 106-502—NOV. 13, 2000

Nov. 13, 2000  
[H.R. 1444]

Fisheries Restoration and Irrigation Mitigation Act of 2000. 16 USC 777 note.  
16 USC 777 note.

Public Law 106-502 106<sup>th</sup> Congress An Act

To authorize the Secretary of the Interior to establish a program to plan, design, and construct fish screens, fish passage devices, and related features to mitigate impacts on fisheries associated with irrigation system water diversions by local governmental entities in the Pacific Ocean drainage of the States of Oregon, Washington, Montana, and Idaho.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Fisheries Restoration and Irrigation Mitigation Act of 2000”.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) **PACIFIC OCEAN DRAINAGE AREA.**—The term “Pacific Ocean drainage area” means the area comprised of portions of the States of Oregon, Washington, Montana, and Idaho from which water drains into the Pacific Ocean.

(2) **PROGRAM.**—The term “Program” means the Fisheries Restoration and Irrigation Mitigation Program established by section 3(a).

(3) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

**SEC. 3. ESTABLISHMENT OF THE PROGRAM.**

(a) **ESTABLISHMENT.**—There is established the Fisheries Restoration and Irrigation Mitigation Program within the Department of the Interior.

(b) **GOALS.**—The goals of the Program are—

(1) to decrease fish mortality associated with the withdrawal of water for irrigation and other purposes without impairing the continued withdrawal of water for those purposes; and

(2) to decrease the incidence of juvenile and adult fish entering water supply systems.

(c) **IMPACTS ON FISHERIES.**—

(1) **IN GENERAL.**—Under the Program, the Secretary, in consultation with the heads of other appropriate agencies, shall develop and implement projects to mitigate impacts to fisheries resulting from the construction and operation of water diversions by local governmental entities (including soil and water conservation districts) in the Pacific Ocean drainage area.

(2) **TYPES OF PROJECTS.**—Projects eligible under the Program may include—

(A) the development, improvement, or installation of—

(i) fish screens;

(ii) fish passage devices; and

(iii) other related features agreed to by non-Federal interests, relevant Federal and tribal agencies, and affected States; and

(B) inventories by the States on the need and priority for projects described in clauses (i) through (iii).

(3) **PRIORITY.**—The Secretary shall give priority to any project that has a total cost of less than \$2,500,000.

**SEC. 4. PARTICIPATION IN THE PROGRAM.** 16 USC 777 note.

(a) **NON-FEDERAL.**—

(1) **IN GENERAL.**—Non-Federal participation in the Program shall be voluntary.

(2) **FEDERAL ACTION.**—The Secretary shall take no action that would result in any non-Federal entity being held financially responsible for any action under the Program, unless the entity applies to participate in the Program.

(b) **FEDERAL.**—Development and implementation of projects under the Program on land or facilities owned by the United States shall be nonreimbursable Federal expenditures.

**SEC. 5. EVALUATION AND PRIORITIZATION OF PROJECTS.** 16 USC 777 note.

Evaluation and prioritization of projects for development under the Program shall be conducted on the basis of—

(1) benefits to fish species native to the project area, particularly to species that are listed as being, or considered by Federal or State authorities to be, endangered, threatened, or sensitive;

(2) the size and type of water diversion;

(3) the availability of other funding sources;

(4) cost effectiveness; and

(5) additional opportunities for biological or water delivery system benefits.

**SEC. 6. ELIGIBILITY REQUIREMENTS.** 16 USC 777 note.

(a) **IN GENERAL.**—A project carried out under the Program shall not be eligible for funding unless—

(1) the project meets the requirements of the Secretary, as applicable, and any applicable State requirements; and

(2) the project is agreed to by all Federal and non-Federal entities with authority and responsibility for the project.

(b) DETERMINATION OF ELIGIBILITY.—In determining the eligibility of a project under this Act, the Secretary shall—

- (1) consult with other Federal, State, tribal, and local agencies; and
- (2) make maximum use of all available data.

SEC. 7. COST SHARING. 16 USC 777 note.

(a) NON-FEDERAL SHARE.—The non-Federal share of the cost of development and implementation of any project under the Program on land or at a facility that is not owned by the United States shall be 35 percent.

(b) NON-FEDERAL CONTRIBUTIONS.—The non-Federal participants in any project under the Program on land or at a facility that is not owned by the United States shall provide all land, easements, rights-of-way, dredged material disposal areas, and relocations necessary for the project.

(c) CREDIT FOR CONTRIBUTIONS.—

(1) IN GENERAL.—The value of land, easements, rights-of-way, dredged material disposal areas, and relocations provided under subsection (b) for a project shall be credited toward the non-Federal share of the costs of the project.

(2) BONNEVILLE POWER ADMINISTRATION

(A) IN GENERAL.—The Secretary may, without further appropriation and without fiscal year limitation, accept any amounts provided to the Secretary by the Administrator of the Bonneville Power Administration.

(B) NON-FEDERAL SHARE.—Any amounts provided by the Bonneville Power Administration directly or through a grant to another entity for a project carried under the Program shall be credited toward the non-Federal share of the costs of the project.

(d) ADDITIONAL COSTS.—

(1) NON-FEDERAL RESPONSIBILITIES.—The non-Federal participants in any project carried out under the Program on land or at a facility that is not owned by the United States shall be responsible for all costs associated with operating, maintaining, repairing, rehabilitating, and replacing the project.

(2) FEDERAL RESPONSIBILITY.—The Federal Government shall be responsible for costs referred to in paragraph (1) for projects carried out on Federal land or at a Federal facility.

16 USC 777 note. SEC. 8. LIMITATION ON ELIGIBILITY FOR FUNDING.

A project that receives funds under this Act shall be ineligible to receive Federal funds from any other source for the same purpose.

16 USC 777 note. SEC. 9. REPORT.

On the expiration of the third fiscal year for which any amounts are made available to carry out this Act, the Secretary shall, after partnering with local government entities and the States in the Pacific Ocean drainage area, submit to Congress a report describing—

- (1) the projects that have been completed under this Act;
- (2) the projects that will be completed with amounts made available under this Act during the remaining fiscal years for which amounts are authorized to be appropriated under section 10; and
- (3) recommended changes to the Program as a result of projects that have been carried out under this Act.

16 USC 777 note. SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act \$25,000,000 for each of fiscal years 2009-2015.

(b) LIMITATIONS.—

(1) SINGLE STATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), not more than 25 percent of the total amount of funds made available under this section may be used for one or more projects in any single State.

(B) WAIVER.—On notification to Congress, the Secretary may waive the limitation under subparagraph (A) if a State is unable to use the entire amount of funding made available to the State under this Act.

(2) ADMINISTRATIVE EXPENSES-

(A) DEFINITION OF ADMINISTRATIVE EXPENSE- In this paragraph, the term 'administrative expense'

means, except as provided in subparagraph (B)(iii)(II), any expenditure relating to-

(i) staffing and overhead, such as the rental of office space and the acquisition of office equipment; and

(ii) the review, processing, and provision of applications for funding under the Program.

(B) LIMITATION-

(i) IN GENERAL- Not more than 6 percent of amounts made available to carry out this Act for each

fiscal year may be used for Federal and State administrative expenses of carrying out this Act.

(ii) FEDERAL AND STATE SHARES- To the maximum extent practicable, of the amounts made available for

administrative expenses under clause (i)-

(I) 50 percent shall be provided to the State agencies provided assistance under the Program; and

(II) an amount equal to the cost of 1 full-time equivalent Federal employee, as determined by the Secretary, shall be provided to the Federal agency carrying out the Program.

(iii) STATE EXPENSES- Amounts made available to States for administrative expenses under clause (i)-

(I) shall be divided evenly among all States provided assistance under the Program; and

(II) may be used by a State to provide technical assistance relating to the program, including any staffing

expenditures (including staff travel expenses) associated with-

(aa) arranging meetings to promote the Program to potential applicants;

(bb) assisting applicants with the preparation of applications for funding under the Program; and

(cc) visiting construction sites to provide technical assistance, if requested by the applicant.'

[http://thomas.loc.gov/cgi-bin/query/F?c111:4:./temp/~c1116YQglb:e1531340:](http://thomas.loc.gov/cgi-bin/query/F?c111:4:./temp/~c1116YQglb:e1531340)

Approved November 13, 2000.

LEGISLATIVE HISTORY—H.R. 1444:

HOUSE REPORTS: No. 106-454, Pt. 1 (Comm. on Resources).

SENATE REPORTS: No. 106-239 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 145 (1999): Nov. 9, considered and passed House. Vol. 146 (2000): Apr. 13, considered and passed Senate, amended. Oct. 17, House concurred in Senate amendments with amendments. Oct. 27, Senate concurred in House amendments.

Æ