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Bureau of Reclamation Provisions in the Infrastructure Investment and Jobs Act (P.L. 117-58)

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SUMMARY

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Bureau of Reclamation Provisions in the Infrastructure Investment and Jobs Act (P.L. 117-58)

In the Infrastructure Investment and Jobs Act (IIJA, also referred to as the Bipartisan Infrastructure Law; P.L. 117-58), Congress provided a major influx of funding for the Bureau of Reclamation (Reclamation), a water resources management agency within the Department of the Interior. Congress provided $8.3 billion to Reclamation in the IIJA. The resources directed to Reclamation under the act were almost five times Reclamation's FY2021 enacted appropriation and more than eight times Reclamation's previously largest supplemental funding appropriation. Congress provided funding for the following areas:

- $1.05 billion for water storage projects, including projects authorized under Section 4007 of P.L. 114-322
- $100 million for small water storage project grants
- $3.2 billion for aging infrastructure projects
- $1.0 billion for rural water projects
- $1.0 billion for water recycling and reuse projects
- $500 million for dam safety projects
- $400 million for water and energy efficiency and other grant projects
- $300 million for Colorado River drought contingency plan projects
- $250 million for water desalination projects
- $250 million for a new program for ecosystem restoration projects
- $100 million for the Cooperative Watershed Management Program
- $100 million for a new program for watershed health projects
- $50 million for Upper Colorado River endangered fish species projects

In addition to the $8.3 billion Congress provided directly to Reclamation in the IIJA, the act provided $2.5 billion to the Secretary of the Interior for a newly created Indian Water Rights Settlement Completion Fund. Observers expect some of this funding to go to Reclamation for the implementation of previously authorized Indian water rights settlements. Other funding is to be distributed directly to tribes for settlement implementation.

Congress included limited guidance for Reclamation funding in the IIJA. The act provided several individual Reclamation programs with more funding than the programs had received—in cumulative terms—since their initial authorizations, and directed significant funding toward entirely new Reclamation authorities. Congress also enacted new authorities for Reclamation that did not receive funding within the act or that clarified existing law.

Reclamation released its Initial Spend Plan for IIJA projects on January 14, 2022. This plan laid out funding allocations for the portion of Reclamation's IIJA funding available in FY2022 (i.e., $1.66 billion). Additional program and project-specific allocations are expected in the future.

Contents

IIJA Funding Summary 1
Water Storage and Conveyance Projects 3
Small Water Storage Project Grants 5
Aging Infrastructure 6
Rural Water 8
Title XVI Water Recycling/Reuse 10
Safety of Dams Projects 12
WaterSMART Grants 13
Colorado River Drought Contingency Plans 14
Colorado River Endangered Species Activities 15
Desalination Projects 16
Ecosystem Restoration 17
Cooperative Watershed Management Program 19
Watershed Health Improvement 19
Indian Water Rights Settlement Completion Fund 20
Authorization-Only Provisions 21
Pumped Storage Hydropower 21
Groundwater Recharge Authority 22
Nonfederal Cost Sharing for Reclamation Projects 23
Initial Spending Plan and Other Developments 23

Figures

Figure 1. Infrastructure Investment and Jobs Act: Bureau of Reclamation Funding Compared with Other Appropriations Legislation 3
Figure 2. Bureau of Reclamation: Major Rehabilitation and Repair (MR&R) Needs 7

Tables

Table 1. Section 40902 of the Infrastructure Investment and Jobs Act (P.L. 117-58): Potential Water Storage Projects 5
Table 2. Bureau of Reclamation IIJA Funding: Initial Spend Plan and Distributions 24

Contacts

Author Information 25

The Bureau of Reclamation (Reclamation), an agency within the Department of the Interior (DOI), manages and develops water resources in the 17 conterminous states west of the Mississippi River, often referred to as the *Reclamation states*.[1] Reclamation operates more than 180 individual *Reclamation projects* for multiple purposes. The primary purpose of most Reclamation projects is agricultural irrigation, but the agency also operates projects for hydropower, flood control, recreation, municipal and industrial water supplies, and fish and wildlife benefits. Water users are responsible for repaying their share of project costs.

Reclamation currently faces many challenges. One such challenge is maintaining the portfolio of existing Reclamation projects as they age. In addition, in recent years, Congress has directed Reclamation to participate in the construction of new and augmented surface water storage projects. Congress also has increased financial support to Reclamation for various types of nonfederal water project development, including water reuse and recycling projects, grants for water and energy conservation efforts, and funding for rural water projects and water infrastructure associated with congressionally authorized Indian water rights settlements, among other activities.

In the Infrastructure Investment and Jobs Act (IIJA, also referred to as the Bipartisan Infrastructure Law; P.L. 117-58), Congress provided $8.3 billion to Reclamation. The resources directed to Reclamation in the IIJA were almost five times Reclamation's FY2021 enacted discretionary appropriation and more than eight times Reclamation's previously largest supplemental funding appropriation. For several Reclamation programs, the IIJA provided more funds than the programs had received cumulatively since their original authorizations. In other cases, Congress directed significant funding toward entirely new Reclamation authorities. Congress also enacted several new Reclamation authorities that did not receive funding within the act or that clarified existing law.

This report discusses Reclamation funding that Congress enacted in the IIJA. It provides background on the programs and authorities funded, discusses congressional guidance in the legislation, and presents potential oversight and implementation issues for congressional consideration. It also includes updated information on funding allocations and spending plans issued under the act.

IIJA Funding Summary

The IIJA provided significant new funding authorizations to Reclamation: $8.3 billion in Division D, Title IX, of the act. Congress appropriated this funding in Division J, Title III, of the IIJA and made the funds available in equal installments for each of the five fiscal years from FY2022 to FY2026 (i.e., $1.66 billion per year). Congress provided this funding to Reclamation in the following areas:

- $1.05 billion (approximately 13% of Reclamation's funding in the act) for water storage projects, including projects authorized under Section 4007 of the Water Infrastructure Improvements for the Nation Act (WIIN Act; P.L. 114-322), as well as other authorities
- $100 million (1%) for a new grant program for small water storage projects
- $3.2 billion (39%) for aging infrastructure projects (including several subcategories of projects)

[1] The 17 Reclamation states are Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

- $1.0 billion (12%) for authorized rural water projects
- $1.0 billion (12%) for authorized water recycling and reuse projects (i.e., the Title XVI program), including a new "large-scale" water reuse and recycling category
- $500 million (6%) for authorized dam safety projects
- $400 million (5%) for nonfederal water and energy efficiency and other grant projects under Reclamation's WaterSMART Program
- $300 million for projects associated with the Upper and Lower Colorado River Basin drought contingency plans (4%)
- $250 million (3%) for authorized water desalination projects
- $250 million (3%) for a new program for ecosystem restoration projects
- $100 million (1%) for the Cooperative Watershed Management Program
- $100 million (1%) for a new program for watershed health projects
- $50 million (0.6%) for projects associated with Colorado River endangered fish species

Congress provided additional guidance for several of the aforementioned categories, including sub-allocations or set-asides for specific types of projects. It also directed prioritization and cost sharing for other authorities receiving funding under the IIJA. Most of the authorities funded under the act were enacted and have been funded previously by Reclamation. However, some of the authorities that Congress funded in the IIJA had not been funded previously and were newly created. The IIJA also included a section clarifying nonfederal partners' ability to use certain Coronavirus relief funds for water resources project cost sharing.

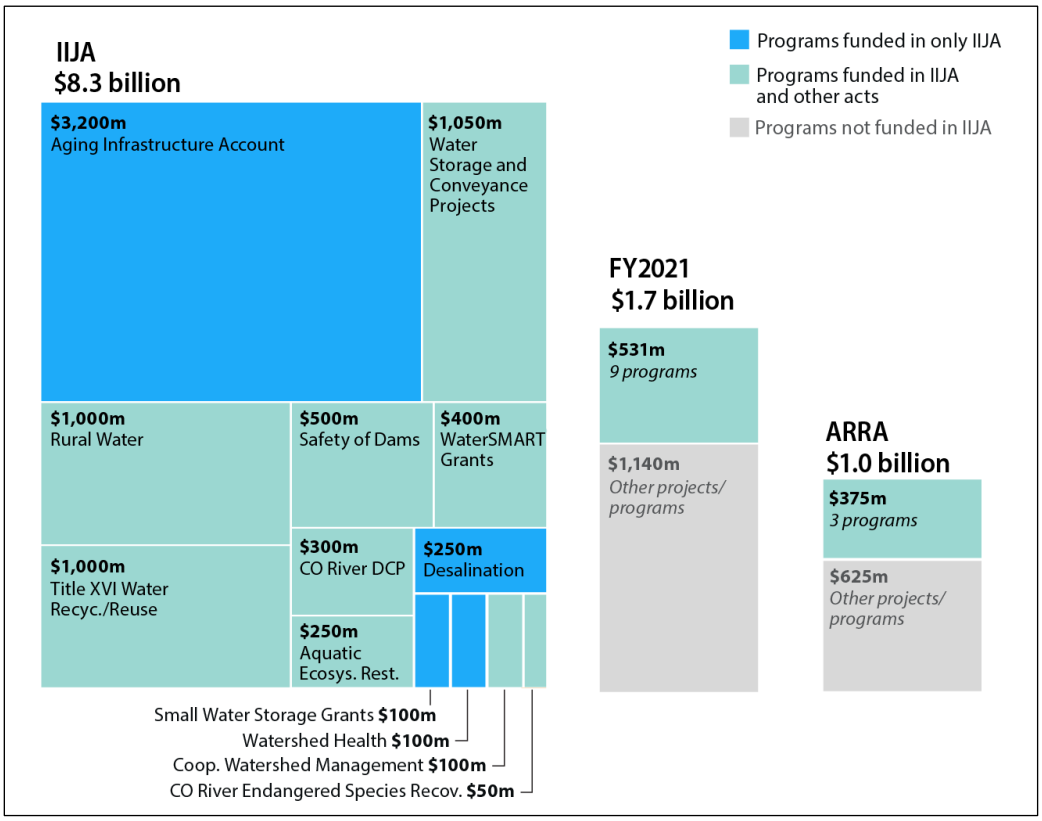
In addition to the $8.3 billion provided directly to Reclamation, the IIJA provided $2.5 billion to the Secretary of the Interior for previously approved Indian water rights settlements in a newly created Indian Water Rights Settlement Completion Fund. Because most federal settlements of this type are funded through Reclamation and/or the Bureau of Indian Affairs, observers expect that some of this $2.5 billion will go toward Reclamation implementation of enacted Indian water rights settlements.

The influx of Reclamation funding enacted under the IIJA is significant relative to the bureau's historic budgetary resources (**Figure 1**). The following sections discuss major areas of Reclamation funding in the IIJA, as well as other relevant provisions.[2] Each section includes background on the Reclamation program funded in the IIJA, a description of the act's relevant provisions, and a discussion of implementation questions and potential issues for Congress.

[2] This report does not include information about other supplemental funding proposals for the Bureau of Reclamation, such as those proposed in the Build Back Better Act (H.R. 5376).

Figure 1. Infrastructure Investment and Jobs Act: Bureau of Reclamation Funding Compared with Other Appropriations Legislation

(comparison with recent enacted discretionary and supplemental appropriations legislation)



Source: Congressional Research Service (CRS), based on Reclamation funding data and P.L. 117-58, P.L. 116-260, and P.L. 111-5.

Notes: Does not reflect suballocations within all programs. ARRA = American Recovery and Reinvestment Act of 2009 (P.L. 111-5); CO River= Colorado River; DCP = drought contingency plans; IIJA = Infrastructure Investment and Jobs Act (P.L. 117-58); m = million.

Water Storage and Conveyance Projects

In Section 4007 of the WIIN Act, Congress enacted new construction authority for Reclamation to build surface and groundwater storage projects.[3] Prior to the IIJA's enactment, Congress appropriated a total of approximately $603 million under this authority between FY2016 and FY2021.

In the IIJA, Congress built on the storage authority initiated in the WIIN Act. In Section 40901 of the IIJA, Congress authorized a total of $1.05 billion for water storage projects in accordance with Section 40902 of the act.[4] Congress appropriated this funding over five years (FY2022-FY2026) in Division J of the act. Section 40902 delineated the circumstances under which projects are eligible for this funding and provided that most of this funding may be used for

[3] For more information on this authority, see CRS In Focus IF10626, *Reclamation Water Storage Projects: Section 4007 of the Water Infrastructure Improvements for the Nation Act*, by Charles V. Stern.

[4] While the total authorization was for $1.15 billion for water storage projects, Congress stipulated that $100 million of this funding go toward a newly established grant program for small water storage projects, as established in Section 40903 of the IIJA. See below section, "Small Water Storage Project Grants."

feasibility studies and construction of water storage projects, provided certain criteria are met. In Section 40902(a)(1)(A) of the IIJA, Congress provided that three kinds of feasibility studies are eligible for funding authorized under Section 40901:

1. Feasibility studies authorized by Congress by the date of the IIJA's enactment;
2. Feasibility studies with funding approved under Section 4007 of the WIIN Act; and
3. The Verde Reservoirs Sediment Mitigation Project (AZ) and the Tualatin River Basin Project (OR).[5]

Similar to the IIJA's approach for feasibility studies, in Section 40902(a)(2) of the act Congress provided that one or more criteria must be met for a project to be eligible for construction funding authorized under Section 40901. Specifically, a project is eligible for IIJA construction funding if any of the following has occurred as of the date of the IIJA's enactment:

1. An act of Congress authorized construction funding;
2. Congress approved construction funding under Section 4007 of the WIIN Act; or
3. Congress approved feasibility study funding for a project, as detailed above, provided that the Secretary of the Interior must find that the project is technically and financially feasible, that sufficient nonfederal funding is available for the nonfederal cost share, and that the project is in the public interest and recommended for construction.[6]

Cost shares for construction projects under this section are to be made in accordance with project-specific authorizing legislation; the WIIN Act (for projects approved in accordance with that legislation); or, for all other projects, 50% for federally owned projects and 25% for nonfederal projects, as applicable.[7] Two types of projects are explicitly noted as *ineligible* for construction funding: (1) projects for which Congress did not approve recommended funding in at least one year prior to the act and (2) projects for which state funding was rescinded prior to the enactment of IIJA. These requirements appear to exclude the Shasta Dam and Reservoir Enlargement Project and the Upper San Joaquin River Basin Storage Investigation from construction funding.

Table 1 includes a preliminary list of projects that appear to meet criteria for study funding and that may be eligible for construction funding. Based on the Congressional Research Service's (CRS's) preliminary review, as many as 15 projects in five states could be eligible for feasibility study funding under Section 40902 of the IIJA.[8] Furthermore, as many as 13 projects in the same five states *could* be eligible for construction funding under Section 40902 of the IIJA. However, whether all of these projects will actually be eligible for and receive funding depends in part on the result of feasibility studies, including a recommendation for construction by the federal government.

[5] P.L. 117-58, §40902(a)(1)(A). In its Initial Spend Plan Reclamation reported that it had approved an appraisal report for the Verde Reservoirs Sediment Mitigation Project, thus that project would be eligible for feasibility study funding.

[6] P.L. 117-58, §40902(a)(2). Specifically, for a feasibility study to receive construction funding, upon completion of the project feasibility study.

[7] P.L. 117-58, §40902(b).

[8] Some of these studies have been completed, put on hold, or no longer be pursuing study funding for other reasons.

Table 1. Section 40902 of the Infrastructure Investment and Jobs Act (P.L. 117-58): Potential Water Storage Projects

Project	State	Meets One or More Criteria for Study Funding?	Potentially Eligible for Construction Funding?
B.F. Sisk Dam Raise and Reservoir Expansion	CA	Yes	Yes
Boise River Basin Feasibility Study	ID	Yes	Yes
Del Puerto Water District Feasibility Study	CA	Yes	Yes
Delta Mendota Canal Subsidence Correction	CA	Yes	Yes
Friant-Kern Canal Subsidence Challenges Project	CA	Yes	Yes
Los Vaqueros Reservoir Phase 2 Expansion	CA	Yes	Yes
Sacramento Regional Water Bank	CA	Yes	Yes
San Luis Low Point Improvement Project	CA	Yes	Yes
Shasta Dam and Reservoir Enlargement Project	CA	Yes	No
Sites Reservoir Storage Project	CA	Yes	Yes
Tualatin River Basin Project	OR	Yes	Yes
Upper San Joaquin River Basin Storage Investigation	CA	Yes	No
Upper Yakima System Storage Feasibility Study	WA	Yes	Yes
Verde Reservoirs Sediment Mitigation Project	AZ	Yes	Yes
Yakima River Basin Water Enhancement Project: Cle Elum Pool Raise	WA	Yes	Yes

Source: CRS, based on analysis of the IIJA and previously enacted legislation.

Notes: For projects to receive construction funding, the Secretary of the Interior must find that the project is technically and financially feasible, that sufficient nonfederal funding is available for the nonfederal cost share, that the project is in the public interest, and that the project is recommended for construction, among other things. Projects are ineligible for construction funding if Congress did not approve Administration-recommended funding in at least one year prior to the act, or if state funding was rescinded prior to the enactment of IIJA.

The funding that Congress provided for water storage projects in the IIJA is almost twice as much as was appropriated for these project from FY2016 to FY2021. Combined with prior appropriations, this funding appears likely to meet much of the outstanding federal cost-share obligations for these projects, which to date have mostly been located in the state of California. Issues for Congress may include Reclamation's ability to promptly obligate these funds, along with baseline appropriations for these projects, to address drought in California and other parts of the West. Congress also may wish to gauge Reclamation's efforts to coordinate with states and local sponsors on nonfederally led projects, since these efforts represent a new approach for Reclamation's involvement in water storage construction. The extent to which Reclamation is successful in implementing these projects may determine whether Congress continues to appropriate funding for new Reclamation water storage construction in the future.

Small Water Storage Project Grants

In Section 40903 of the IIJA, Congress directed the Secretary of the Interior to establish a new competitive grant program for small water storage projects, which are allocated $100 million of the total water storage funding authorized under Section 40901. Congress appropriated this

funding over five years (FY2022-FY2026) in Division J of the act. Eligible projects are defined as projects in Reclamation states, Hawaii, or Alaska with water storage capacity of 2,000-30,000 acre-feet (AF) or that convey water directly or indirectly from surface or groundwater storage. Federal costs under this section are to be no more than the lesser of 25% of the project's total costs or $30 million.[9]

The IIJA grant authority for small water storage projects allows Reclamation to operate a new program funding nonfederal water storage projects within the limits authorized by Congress. The cost shares for this authority are similar to that available to nonfederal projects initiated under the WIIN Act's authorities (see above section, "Water Storage and Conveyance Projects"). Although these projects are hypothetically eligible to pursue WIIN Act funding, the new grant program sets aside funding for these projects to compete with one another. Similar to Reclamation's funding for nonfederal WIIN Act projects, this program continues a trend of Reclamation (and the federal government) serving as a project reviewer/participant, as opposed to a project owner.

Aging Infrastructure

Aging infrastructure represents a significant challenge for Reclamation. Most of the bureau's facilities are 60-100 years old; as of 2015, Reclamation estimated the total replacement value of these facilities at approximately $99.0 billion.[10] In April 2021, Reclamation estimated needs of $2.3 billion over the FY2021-FY2025 period for appropriated non-dam safety projects, along with additional needs for dam safety projects and projects such as power facilities, which typically are not funded with appropriations (**Figure 2**).[11] Although this amount represents a fraction of the value of Reclamation facilities, on an annualized basis, it is significantly more than Reclamation typically requests to meet these needs.

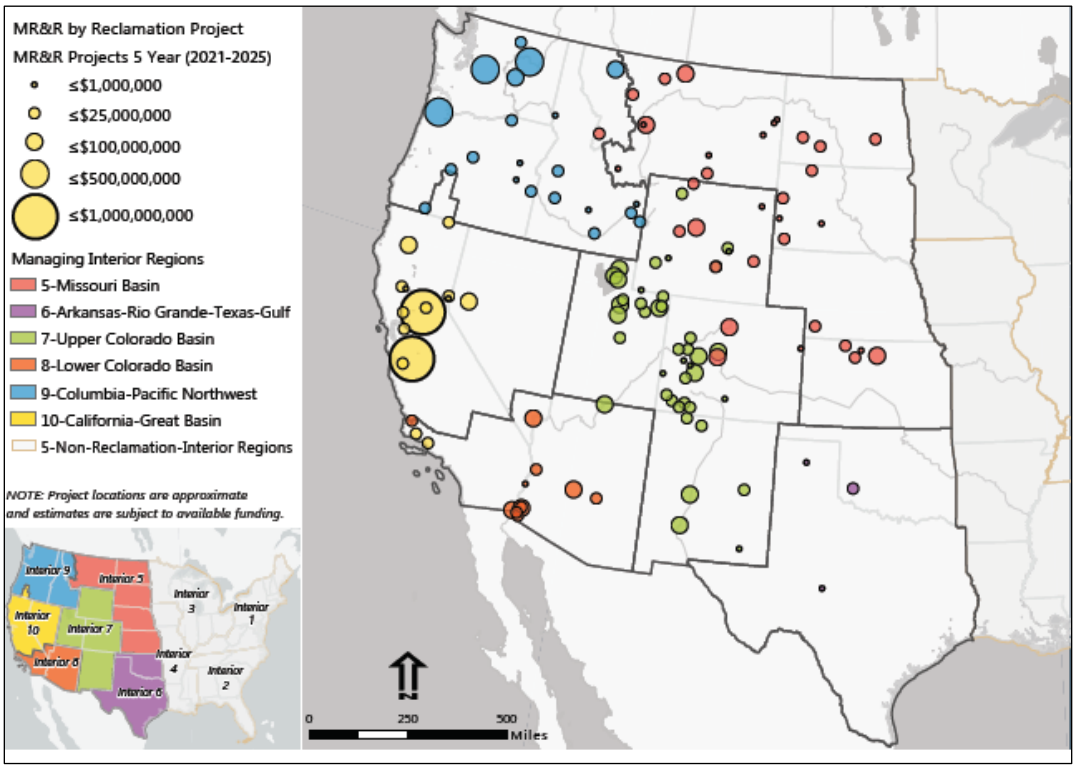
[9] P.L. 117-58, §40903(c).

[10] Bureau of Reclamation, *Infrastructure Investment Strategy*, May 2015, p.1, at https://www.usbr.gov/infrastructure/docs/Infrastructure_Investment_Strategy_Final_Report_1SEP15.pdf.

[11] Bureau of Reclamation, *Asset Management Report Pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019*, April 2021, at https://www.usbr.gov/infrastructure/mrr/docs/asset-management-report-to-congress.pdf.

Figure 2. Bureau of Reclamation: Major Rehabilitation and Repair (MR&R) Needs

(five-year MR&R deeds by Interior/Reclamation region as of 2021)



Source: Bureau of Reclamation, *Asset Management Report Pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019*, April 2021.

Reclamation generally operates under a *beneficiary-pays* model in which Congress must appropriate funding for repairs and project sponsors must repay this funding. However, most Reclamation contractors do not own the facilities from which they benefit and therefore may have difficulty financing their share of project repairs.[12] In the context of aging infrastructure, this situation poses a challenge for upkeep of Reclamation facilities.

To address Reclamation's aging infrastructure issues, Congress established an Aging Infrastructure Account in Section 9603 of the Omnibus Lands Act of 2009 (P.L. 111-11) and amended this authority in Section 1101, Title XI, of P.L. 116-260. The account is authorized to receive congressional appropriations for Reclamation to provide for the conduct of extraordinary operation and maintenance work at a Reclamation facility that is to be repaid by users over periods of up to 50 years, in accordance with existing project cost allocations. In turn, these repayments would be available for expenditures, without further appropriation, for future projects (i.e., a revolving fund).

In Section 40901 of the IIJA, Congress authorized a total of $3.2 billion for the Aging Infrastructure Account, with $200 million of this funding designated for specific purposes under Section 40904 of the act. Congress appropriated this funding over five years (FY2022-FY2026) in Division J of the act. The funding is Reclamation's first such funding for this account. One

[12] To provide borrowers with financial support, some creditors require collateral in the form of the borrower's infrastructure assets. If the borrower does not possess the assets for which it is borrowing funding, it can be difficult to obtain financing.

hundred million dollars of this funding authorized under Section 40904(a) was set aside for Reclamation projects built prior to 1915 that suffered critical failures within the past two years; this funding was designated by Congress as nonreimbursable (i.e., a 100% federal expense, not subject to repayment).[13] An additional $100 million of the Aging Infrastructure Account funding was set aside for dam rehabilitation, replacement, and construction under Section 40904(b), which authorizes funds for dam safety efforts at specific dams that were constructed after 1905, in accordance with the Carey Act of 1894, with repair costs in excess of $50 million.[14] Whereas funding under Section 40904(a) is stipulated as nonreimubursable, no such designation was made for Section 40904(b).

The appropriation for the Aging Infrastructure Account constitutes the account's first funding and will form the basis for Reclamation's largest-ever bureau-wide expenditures to rehabilitate and repair its infrastructure.[15] In implementing this program, Reclamation may need to address a number of questions in guidance, including how entities will apply for funding from the account, how these funds will be distributed and prioritized, and how Reclamation intends to conduct oversight of this funding. Implementation guidance will likely need to address the extent to which funding under this authority is available for project repairs and rehabilitation only, rather than for project upgrades and enhancements. In addition to these questions, Reclamation will need to determine eligibility for the narrower funding allocations in the IIJA for critical facility failures and Carey Act dams, respectively. Reclamation initiated the first application period for aging infrastructure funding under the IIJA on December 29, 2021.[16]

Rural Water

Since 1980, Congress has authorized Reclamation to undertake the design and construction, and sometimes the operations and maintenance (O&M), of specific *rural water supply projects* intended to deliver potable water supplies to rural communities in western states.[17] These projects are largely located in North Dakota, South Dakota, Montana, and New Mexico and serve tribal reservations and nontribal rural communities with nonexistent, substandard, or declining water supply or water quality. Many rural water projects are large in scope, taking water from one location and moving it across long distances to tie to existing systems. Although municipal and industrial portions of most Reclamation water supply facilities require 100% repayment with interest, in various laws Congress has authorized rural water projects that receive some or all costs from the federal government on a nonreimbursable basis (i.e., a de facto grant). For example, the federal government pays up to 100% of costs for tribal rural water supply projects, including O&M. For nontribal rural water supply projects, the federal cost share for current projects ranges from 75% to 80%.

Reclamation continues to construct rural water projects (and to provide O&M assistance for some tribal components). For example, Congress provided $145 million in both FY2020 and FY2021

[13] Other projects funded by the Aging Infrastructure Account are subject to reimbursement by project users, in accordance with project cost allocations.

[14] 43 U.S.C. 641.

[15] Typically, Reclamation's annual budget for major repair and rehabilitation ranges from $50 million to $100 million.

[16] Bureau of Reclamation, "Reclamation application period gets underway for aging infrastructure with funding from Bipartisan Infrastructure Law," press release, December 29, 2021, at https://www.usbr.gov/newsroom/#/news-release/4066.

[17] For more background on these projects, see CRS Report R46308, *Bureau of Reclamation Rural Water Projects*, by Anna E. Normand.

for construction and O&M of rural water projects.[18] Each rural water project authorization required the construction cost ceilings in the authorizing law to be adjusted for inflation to include the rising cost of materials and labor, estimated to be 4% annually. As a result, the overall cost of authorized rural water projects has risen and continues to rise, due in part to actual federal appropriations for projects falling short of the optimal funding scenarios assumed under planning projections.[19] In early 2020, Reclamation reported that $1.2 billion was needed to complete the construction for its five authorized, ongoing rural water projects.[20] Additionally, in the Clean Water for Rural Communities Act (Division FF, Title XI, Section 1110, of P.L. 116-260), Congress authorized another rural water project; the act directed the Secretary of the Interior to enter into a cooperative agreement to provide assistance at a 65% federal cost share for the planning, design, and construction of the Musselshell-Judith Rural Water System.[21]

In Section 40901 of the IIJA, Congress authorized $1.0 billion for Reclamation's rural water projects. Congress appropriated this funding over five years (FY2022-FY2026) in Division J of the act. Congress limited eligibility for this funding to Reclamation rural water projects that were authorized in an act of Congress before July 1, 2021, in accordance with the Reclamation Rural Water Supply Act of 2006 (43 U.S.C. §§2401 et seq.).[22] Based on the activities Reclamation conducted under the authority of the Rural Water Supply Act of 2006, the following rural water

[18] Over 80% of this funding was for construction. See Bureau of Reclamation budget justifications and additional spending plans at Reclamation, "Bureau of Reclamation Budget," at https://www.usbr.gov/budget/.

[19] Nonfederal sponsors generally have met their cost-share requirements prior to the federal government meeting its cost-share requirements; therefore, nonfederal sponsors are less subject to index increases. Reclamation, *Assessment of Reclamation's Rural Water Activities and Other Federal Programs That Provide Support on Potable Water Supplies to Rural Communities in the Western United States*, October 7, 2014, at https://www.usbr.gov/ruralwater/docs/Rural-Water-Assessment-Report.pdf. U.S. Department of the Interior, Office of Inspector General, *Program Assessment Rating Tool, Progress Evaluation, Bureau of Reclamation, Rural Water Supply Projects*, ER-RR-BOR-0002-2008, February 2009, at https://www.doioig.gov/sites/doioig.gov/files/2009-I-0007.pdf.

[20] Authorized, ongoing rural water projects in early 2020 included the Garrison Diversion Unit of the Pick-Sloan Missouri Basin Program, Fort Peck Reservation/Dry Prairie Rural Water System, Lewis and Clark Rural Water System, Rocky Boy's/North Central Montana Rural Water System, and Eastern New Mexico Water Supply. Another uncompleted rural water project was the Jicarilla Apache Rural Water System; but, as of October 2019, Reclamation and the Jicarilla Apache Nation were not in discussions regarding this project. Personal correspondence between CRS and Reclamation on February 21, 2020.

[21] The Clean Water for Rural Communities Act (Section 1110 of Title XI of Division FF of P.L. 116-260) authorized appropriations at $56.7 million subject to cost indexing for the 2014 cost estimate of the feasibility report. The act also authorized $5 million for reviewing the Dry-Redwater Regional Water Authority System submitted to Reclamation on September 1, 2010, and for completing any additional work to ensure the study complied with Reclamation's feasibility standards.

[22] Section 40901 of Title IX of Division D and Title III of Division J of the IIJA. The Rural Water Supply Act of 2006 (Title I of P.L. 109-451) created the Rural Water Supply Program, a structured program for developing and recommending future rural water supply projects. This program was to replace the previous process of authorizing projects individually—often without the level of analysis and review (e.g., feasibility studies) required for Reclamation's other projects. Under the Rural Water Supply Program, Congress authorized Reclamation to work with rural communities and tribes to identify municipal and industrial water needs and options to address such needs through appraisal investigations and feasibility studies. Congress would then consider feasibility studies recommended by the Administration before authorizing specific project construction in legislation. In 2015, the Central Montana Rural Water Authority submitted the *Musselshell-Judith Rural Water System Feasibility Study* to Reclamation for technical review under this program. Ultimately, Reclamation did not recommend and Congress did not authorize any projects before the authority for the program expired in 2016. However, the Clean Water for Rural Communities Act authorized federal assistance for the Musselshell-Judith Rural Water System in 2020. In addition, pursuant to Section 104 of P.L. 109-451, the Secretary of the Interior developed a comprehensive assessment of the status and plans for completing the design and construction of rural water supply projects that were individually authorized prior to enactment of the Rural Water Supply Act of 2006.

projects authorized prior to July 1, 2021, may be eligible to receive the appropriations provided by the IIJA for the share of federal costs.[23]

- Garrison Diversion Unit of the Pick-Sloan Missouri Basin Program
- Fort Peck Reservation/Dry Prairie Rural Water System
- Lewis and Clark Rural Water System
- Rocky Boy's/North Central Montana Rural Water System
- Eastern New Mexico Water Supply
- Jicarilla Apache Rural Water System[24]
- Musselshell-Judith Rural Water System[25]

Assuming no major changes to existing project construction cost estimates, the $1 billion provided by the IIJA for Reclamation rural water projects could satisfy nearly all of the federal responsibilities for existing authorized projects. Potential issues for Congress in relation to Reclamation rural water activities include the following:

- How will Reclamation distribute the IIJA funds to eligible rural water projects? What oversight activities will Reclamation perform on the use of these funds?
- How much federal responsibility remains for funding Reclamation's rural water activities (e.g., construction, O&M) after IIJA funding is obligated? Will Congress continue to provide annual appropriations to meet federal responsibilities, and how would it prioritize those appropriations among projects and activities?
- Will Congress continue to authorize Reclamation to review rural water feasibility studies and to provide federal assistance for rural water projects upon completion of feasibility studies?

Title XVI Water Recycling/Reuse

Reclamation's Title XVI program provides assistance for nonfederal studies and construction projects to reclaim and reuse wastewater and naturally impaired surface and groundwater.[26] The original Title XVI legislation, authorized under the Reclamation Projects Authorization and Adjustment Act of 1992 (P.L. 102-575), approved construction of five reclamation wastewater projects and six wastewater and groundwater recycling/reclamation studies. Congress added new projects between 1992 and 2009, resulting in the authorization of 53 individual, geographically specific Title XVI projects.[27]

Amendments to the Title XVI program enacted in December 2016 under Section 4009(c) of the WIIN Act approved a new mechanism to authorize Title XVI projects: the WIIN Act authorized the Secretary of the Interior to accept and review nonfederal Title XVI feasibility studies to

[23] It is unclear whether funds also may be provided for reviewing the Dry-Redwater Regional Water Authority System feasibility report as authorized in the Clean Water for Rural Communities Act at $5 million.

[24] Reclamation and the Jicarilla Apache Nation would need to restart communication and their agreement to execute this authorized project.

[25] Per the Clean Water for Rural Communities Act, Reclamation must first establish that the current project is substantially similar to the 2015 feasibility report.

[26] The program name refers to the bill's authorization for these projects, Title XVI of P.L. 102-575.

[27] Many of these projects are complete or are no longer seeking funding.

determine eligibility for future planning, design, and construction funding. To be eligible for federal funding, projects must be transmitted to Congress by the Secretary of the Interior, then recommended for funding by the Secretary, and ultimately designated by Congress to receive funding in enacted appropriations legislation.[28] From 2017 to 2021, this process resulted in the approval of 61 additional projects and multiple rounds of project-specific funding. Accounting for inactive and completed projects, CRS estimates that total remaining federal contributions for active Title XVI projects prior to enactment of the IIJA were in excess of $700 million.[29]

Title XVI project funding is awarded as grants to sponsors of nonfederal projects. Reclamation conducts separate grant solicitations for those projects authorized individually by Congress and those authorized and approved pursuant to the WIIN Act. For most Title XVI projects, the federal cost share is up to 25% of project costs, not to exceed $20 million.[30]

In Section 40901 of the IIJA, Congress authorized a total of $1 billion for water recycling and reuse projects. Congress appropriated this funding over five years (FY2022-FY2026) in Division J of the act. Of the $1 billion for these projects, Congress designated $550 million for Title XVI projects in general. For projects funded in the IIJA, Congress waived the WIIN Act's requirement that these projects be designated by name in enacted appropriations legislation.[31] Title XVI projects eligible under the IIJA appear to include not only projects that Reclamation has approved but also future projects that may be approved under the WIIN Act authority.

The remaining $450 million in funding is reserved for grants to "large-scale water recycling and reuse" projects, as authorized under Section 40905 of the IIJA. Congress defined these projects to include water recycling and reuse projects (including conveyance projects) in a Reclamation state with total costs in excess of $500 million. In contrast to traditional Title XVI projects (which are limited to the lesser of $20 million or 25% federal cost share), projects under this section are entitled to a federal cost share of 25% of project costs with no dollar cap on federal support. Several projects approved for Title XVI support appear to meet the eligibility criteria for this funding; however, this authority is not limited to previously approved Title XVI projects.

According to Reclamation, Congress appropriated $840 million for Title XVI projects from the inception of the Title XVI program in 1992 through January 2021.[32] Thus, the IIJA's influx of funding over five years represents more resources than have been made available for the program in the previous 30 years combined. Although there is considerable demand for Title XVI funding and projects, the maturity of individual projects, as well as the ability of local project sponsors to fund their project cost shares, varies widely. Additionally, it is unclear how many projects will benefit from the new large-scale water recycling and reuse authority and to what extent. For example, under the Title XVI WIIN Act authority, Reclamation in May 2021 approved a project by the Metropolitan Water District of Southern California with total estimated costs of $2.7 billion. Without a dollar cost cap, 25% of this project's costs would be $675 million. Thus, Reclamation may not fund the full 25% of project costs as authorized under this authority but still could provide funding for this project well in excess of the previous project caps.

[28] 43 U.S.C. §390h(g)(2).

[29] CRS analysis of Bureau of Reclamation data, updated in May 2021.

[30] 43 U.S.C. §390h-13. Although the $20 million statutory cap for these projects was authorized to be indexed to October 1996 prices, as of enactment of the IIJA, Reclamation continued to apply a cap of $20 million for most Title XVI projects.

[31] P.L. 117-58, §40901(4)(A)(ii).

[32] CRS analysis of Bureau of Reclamation data as of January 2021.

Congress may be interested in future project-based allocations under this authority and the extent to which the de facto exemption to previous Title XVI cost shares authorized under the new large-scale water recycling and reuse authority alleviates pressure on regular Title XVI allocations and/or leads to calls for other changes to the program's cost-sharing requirements. Some in Congress have called for Reclamation to increase the federal cost-share cap of $20 million for most Title XVI projects. Congress originally authorized this cap of $20 million in federal costs indexed to 1996 costs. Advocates note that if Reclamation adopted such an adjustment, the new federal cap would be $35 million and the IIJA could increase its support for individual projects.[33]

Safety of Dams Projects

Reclamation manages 491 dams throughout Reclamation states.[34] Reclamation's Dam Safety Program provides for inspection and repairs to qualifying projects at Reclamation dams.[35] Reclamation conducts dam safety inspections through the Safety Evaluation of Existing Dams (SEED) program.[36] Reclamation carries out corrective actions, if necessary, through the Initiate Safety of Dams Corrective Action (ISCA) program. With ISCA appropriations, Reclamation funds modifications on priority structures based on an evolving identification of risks and needs.

In April 2021, Reclamation estimated the needs for dam safety projects over the FY2021-FY2025 period at $1.4 billion.[37] The analysis provided further details on estimated needs over a 30-year period (FY2021-FY2050) for dam safety projects: $2.1 billion for 12 projects, including the B.F. Sisk Dam modification project (estimated at $1.1 billion).[38] In FY2021, Congress provided $107.1 million for Reclamation's Dam Safety Program, including $86.5 million for the ISCA program to fund construction of five projects and preconstruction activities for seven projects.[39]

In Section 40901 of the IIJA, Congress authorized $500 million for the Dam Safety Program, in accordance with the Reclamation Safety of Dams Act of 1978, as amended (43 U.S.C. §§506 et seq.). Congress appropriated this funding over five years (FY2022-FY2026) in Division J of the IIJA. Reclamation may provide funding for various activities of Reclamation's Dam Safety Program, including SEED and ISCA activities. A nonfederal cost share may be required for some of these activities. The Reclamation Safety of Dams Act Amendments of 1984 (P.L. 98-404) required a 15% cost share from sponsors for dam safety modifications when modifications are based on new hydrologic or seismic data or on changes in state-of-the-art design or construction

[33] Letter from Dianne Feinstein, United States Senator, and Alex Padilla, United States Senator, to Deb Haaland, Secretary of the Interior, December 17, 2021, at https://www.feinstein.senate.gov/public/_cache/files/f/0/f08d000e-ad89-4a99-8716-8efe81c981df/3F93F947159E449312688743A4671C79.water-priorities-letter-v2.pdf.

[34] Of the total dams, 364 dams at 243 facilities are classified as high and significant hazard (i.e., dam failure could result in fatalities and/or significant economic destruction). Reclamation, *FY2022 Bureau of Reclamation Budget Justifications*, 2021, p. BW-11, at https://www.usbr.gov/budget/.

[35] Funding for Reclamation's dam safety program also supports the Department of the Interior Dam Safety Program ($1.3 million in FY2021). The Commissioner of Reclamation serves as the Department of the Interior's coordinator for dam safety and advises the Secretary of the Interior on program development and operation of the department's dam safety programs.

[36] Reclamation, *Dam Safety Public Protection Guidelines: A Risk Framework to Support Dam Safety Decision-Making*, 2011, at https://www.usbr.gov/ssle/damsafety/documents/PPG201108.pdf.

[37] Bureau of Reclamation, *Asset Management Report Pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019*, April 2021, at https://www.usbr.gov/infrastructure/mrr/docs/asset-management-report-to-congress.pdf.

[38] The median estimate of need per project over the 30-year timeframe was $39.0 million.

[39] Funding also included $19.3 million for the Safety Evaluation of Existing Dams program and $1.3 million for the Department of the Interior's Dam Safety Program.

criteria that are deemed necessary for safety purposes. Reclamation is to allocate costs resulting from age and normal deterioration or from lack of maintenance according to the purpose for which the structure was authorized for construction.[40]

It is unclear whether IIJA funding for the Dam Safety Program also may apply to developing additional project benefits in conjunction with dam safety modifications. In 2015, Section 203 of P.L. 114-113 amended the Reclamation Safety of Dams Act to authorize the Secretary of the Interior to develop additional project benefits while making dam safety modifications, if such additional benefits are deemed necessary and in the interests of the United States and the project.[41] Nonfederal entities or partners and Reclamation must agree to a cost share related to the additional project benefits. Some projects under this authority, such as the B.F. Sisk Dam Raise and Reservoir Expansion, were proposed for funding under Section 4007 of the WIIN Act.[42]

The IIJA provides nearly five times the annual funding for Reclamation's Dam Safety Program than Congress provided to Reclamation in FY2021. Reclamation's distribution of IIJA funding for its Dam Safety Program could be a subject of congressional oversight, including questions about the amount of funding provided for dam safety modification projects and whether funds are provided for the SEED program or Reclamation's Dam Safety Program. For example, IIJA funding could complete most of the 12 dam safety projects listed in an April 2021 report estimating Reclamation's dam safety needs. However, $500 million would not complete either of the two most expensive dam safety projects listed in that report. In addition, IIJA dam safety funding may be eligible for providing the federal cost share of project benefits constructed in addition to dam safety modifications. The level of future annual appropriations for Reclamation's Dam Safety Program also could draw congressional attention.

WaterSMART Grants

Reclamation provides federal funding for projects in four categories under its WaterSMART program: water and energy efficiency, small-scale water efficiency, water marketing strategy, and environmental water resources projects. Congress originally approved authority for WaterSMART grants in Section 9504 of the Secure Water Act (Title IX of P.L. 111-11) and has amended the authority multiple times.[43] The program's initial focus was providing water and energy efficiency grants. In FY2017, Reclamation expanded grant opportunities to include small-scale water efficiency projects and water marketing strategy development.[44] The federal government funds up to 50% of project costs for each of these three grant types. Pursuant to P.L. 116-260, Reclamation began funding a fourth category of grants for environmental water resources projects in FY2022; the maximum potential federal cost share for these projects is 75%.

Section 9502 of the Secure Water Act, as amended, defined eligible applicants for WaterSMART grants to include states, Indian tribes, irrigation districts, water districts, other organizations with water or power delivery authority, as well as nonprofit conservation organizations acting in

[40] 43 U.S.C. §508.

[41] 43 U.S.C. §509b.

[42] See prior section, "Water Storage and Conveyance Projects."

[43] 42 U.S.C. §§10361 et seq.

[44] WaterSMART grants initially were referred to as *Challenge Grants* and were first funded during FY2009 based on supplemental funding made available in the American Recovery and Reinvestment Act (P.L. 111-5). In 2010, the broader WaterSMART Program was established within the department and the grant program's name was changed to *WaterSMART grants*.

partnership with one of the aforementioned organizations.[45] As with most Reclamation programs, applicants must be located in a Reclamation state or territory. The statutory maximum amount per grant is generally $5 million; in practice, though, Reclamation has set lesser caps for the various categories of these grants.[46]

In Section 40901 of the IIJA, Congress authorized $400 million for WaterSMART grants. Congress appropriated this funding over five years (FY2022-FY2026) in Division J of the act. The only additional stipulations for this funding under the IIJA are that $100 million must be made available for WaterSMART projects that would improve natural or nature-based features, as defined in Section 5504 of P.L. 111-11.[47] It is unclear whether the IIJA funding would be solicited separately or would be combined with future discretionary grant funding for the same purposes.

Coupled with the 2020 amendments to the WaterSMART grants authority in the Secure Water Act, the $400 million for WaterSMART grants funding in the IIJA is a significant influx of funding that expands the number and types of WaterSMART grant projects funded by Reclamation. Congress may be interested in the extent of nonfederal demand for this funding, including in the $100 million in funding for projects with natural and nature-based features (presumably similar to the aforementioned environmental water resource project category authorized in P.L. 116-260). Although WaterSMART grants typically have been limited to Reclamation states and territories, if these areas do not generate sufficient demand for IIJA funding, representatives from non-Reclamation states might propose rescission of funds, or else expansion of eligible recipient locations to areas they represent. Congress also may be interested in how certain WaterSMART authorizing provisions (e.g., cost-share caps) are applied in the context of the funding increases under the IIJA and the extent to which this practice affects the success of the WaterSMART grant program.[48]

Colorado River Drought Contingency Plans

As part of its authorized federal role and the large number of federally managed projects in the Colorado River Basin, the federal government has led multiple efforts attempting to improve the basin's water supply outlook. The latest of these efforts culminated in the 2019 approval by Reclamation and the basin states, as well as by Congress (in the Colorado River Drought Contingency Plan Authorization Act; P.L. 116-14), of drought contingency plans (DCPs) for the Upper and Lower Colorado River Basins. Among other provisions, the DCPs required reductions beyond previous curtailment plans based on Lake Mead storage levels, committed Reclamation to additional water conservation efforts, and put in place plans to coordinate Upper Basin operations to enhance Lake Powell storage levels and hydropower generation.[49]

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[45] 42 U.S.C. §10362.

[46] For more information and grant solicitation links, see Reclamation, "WaterSMART," at https://www.usbr.gov/watersmart/index.html.

[47] 42 U.S.C. §10364.

[48] For example, some in Congress have called for Reclamation to uniformly apply the maximum cost share of $5 million per project for WaterSMART grants (instead of applying a lesser cap for some projects, as is currently the practice). See Letter from Dianne Feinstein, United States Senator, and Alex Padilla, United States Senator, to Deb Haaland, Secretary of the Interior, December 17, 2021, at https://www.feinstein.senate.gov/public/_cache/files/f/0/f08d000e-ad89-4a99-8716-8efe81c981df/3F93F947159E449312688743A4671C79.water-priorities-letter-v2.pdf.

[49] For more information about drought contingency plans and the Colorado River, see CRS Report R45546, *Management of the Colorado River: Water Allocations, Drought, and the Federal Role*, by Charles V. Stern and Pervaze A. Sheikh.

One of the primary federal contributions to the DCPs approved by Congress in P.L. 116-14 was additional grant support for voluntary conservation projects in the Colorado River Basin whose water savings are dedicated to basin-wide *system water*.[50] Congress originally authorized federal participation in these efforts in 2015 (Consolidated and Further Continuing Appropriations Act, 2015; P.L. 113-235, Division D). As of September 2019, Reclamation estimated the Lower Basin program had conserved 175,347 AF of system water, at an average cost of $170.14 per AF.[51] Both the Upper and the Lower Basin DCPs included provisions to expand these efforts.

In Section 40901 of the IIJA, Congress authorized $300 million for the DCPs. Congress appropriated this funding over five years (FY2022-FY2026) in Division J of the act. The only additional stipulations for this funding under the IIJA are that $50 million must be made available for efforts associated with the Upper Basin DCP.

DCP signees aim to conserve an overall amount of water in the Colorado River system using federal seed funding, but there is no comprehensive estimate of the potential water savings (including likely costs per AF) associated with future DCP-related grant agreements for system conservation and other efforts. For instance, it is unclear how future grant agreements might compare with the aforementioned 2015-2019 Lower Basin efforts and to what extent future system conservation might be more costly than earlier efforts. Congress may be interested in the geographic distribution of future grants and other financial assistance, as well as the relative efficiency (in terms of water savings per dollar) of DCP water conservation efforts over time and the potential for these efforts to serve as a model for other areas.

Colorado River Endangered Species Activities

As part of Reclamation's role in Upper Colorado River Basin water management, Reclamation and its partners operate several programs that fund activities to protect and restore fish species in the Colorado River and its tributaries. Some of these programs provide the basin's federal and nonfederal project compliance with the Endangered Species Act (ESA; 87 Stat. 884, 16 U.S.C. §§1531-1544). These programs include the following:

- **The Upper Colorado and the San Juan River Basins Endangered Fish Recovery Programs (Fish Programs)**. The Fish Programs were established in 1988 and 1992, respectively, and were formally authorized by Congress in P.L. 106-392. The programs provide compliance with ESA and allow federal and nonfederal water and power projects in the Upper Basin to operate without violating ESA.
- **The Lower Colorado River Multispecies Conservation Program (MSCP)**. The MSCP is a 50-year, multi-stakeholder initiative to maintain ESA compliance and conserve 27 special status species (including 8 species listed under ESA) along the Lower Colorado River, while maintaining water and power supplies for users. DOI formally established the program in 2005, and Congress authorized it under Subtitle E of Title IX of P.L. 111-11.
- **The Glen Canyon Dam Adaptive Management Program (AMP).** The AMP was established in 1997 in response to a directive from Congress under the Grand

[50] *System water* refers to water that is provided to increase water supplies as a whole, without being directed toward additional consumptive use for specific contractors or water users.

[51] Lower Colorado Region, "Pilot System Conservation Program," at https://www.usbr.gov/lc/region/programs/PilotSysConsProg/pilotsystem.html.

> Canyon Protection Act of 1992 (P.L. 102-575).[52] Among other aims, the AMP attempts to integrate dam operations, downstream resource protection and management, and monitoring and research in the river south of Glen Canyon Dam.

Pursuant to their authorizing legislation, for more than two decades, the Fish Programs and the AMP were funded by Upper Basin hydropower revenues transferred from the Department of Energy's Western Area Power Administration.[53] However, due to a revised statutory interpretation, additional appropriations from Congress have been required to make these funds available since FY2019. The MSCP typically is funded with discretionary appropriations for Reclamation's Lower Colorado River Operations program.

In Section 40901 of the IIJA, Congress authorized $50 million for the Fish Programs, the AMP, and the MSCP. Congress appropriated this funding over five years (FY2022-FY2026) in Division J of the act. Congress did not specify how the funding is to be allocated among individual programs.

The additional funding for the Fish Programs and the AMP in the IIJA may supplement potential funding shortfalls faced by these programs. However, it is unclear to what extent this funding will address the programs' long-term structural issues (in particular, those issues faced by the Fish Programs). Reclamation's decisions related to the exact allocation and disbursement of funds among the programs may be of interest to Congress; although all of these authorities generally benefit environmental activities in the Colorado River Basin, their specific benefits are concentrated in different parts of the basin and affect different basin interests to varying extents.

Desalination Projects

Reclamation and other offices within DOI have supported desalination research and development since the early 1950s. In recent decades, Reclamation has worked to advance desalination with internal research, grants on specific topics of interest and, at Congress's direction, construction and operations of a facility for testing brackish desalination technologies.[54] Section 4009(a) of the WIIN Act expanded the federal role in desalination facilities by authorizing the Secretary of the Interior to provide federal funding of up to 25% of the total cost of an eligible desalination project in a Reclamation state.[55] The authority includes desalination of both seawater and brackish water and applies to facilities constructed, operated, or sponsored by an entity of a state. Similarly to the process for Title XVI projects, a project may apply for and receive grant funding under the WIIN Act authority only after Reclamation has recommended the project for funding and Congress has approved it by name in an enacted appropriations bill.[56] Between 2016 and 2021, Reclamation approved 13 desalination projects for potential funding under this authority and began to recommend funding for individual projects.[57]

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[52] In P.L. 102-575, Congress provided that Reclamation operate Glen Canyon Dam "in such a manner as to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established."

[53] Normally, these funds would be slated for repayment of Colorado River Storage Project costs to the Treasury.

[54] Most of these activities were formally authorized in the Water Desalination Act of 1996 (P.L. 104-298).

[55] §4009(a) of the WIIN Act included no per project cap on grant funding. Reclamation previously has capped these awards at the lesser of 25% of total project costs or $20 million.

[56] 42 U.S.C. 10301 note.

[57] For individual project eligibility and awards, see Reclamation, WaterSMART, "Desalination," at

In Section 40901 of the IIJA, Congress authorized $250 million for desalination project grants pursuant to Section 4009(a) of the WIIN Act. Congress appropriated this funding over five years (FY2022-FY2026) in Division D of the IIJA. As with the waiver it provided for WIIN Act Title XVI projects in the IIJA, Congress waived the WIIN Act's requirement for desalination projects to be designated by name in enacted appropriations legislation.[58] Unlike recent desalination projects funded under the WIIN Act authorities, no additional congressional approval is required for Reclamation to release IIJA desalination project grant funding to individual projects. Eligible desalination projects appear to include not only projects that Reclamation has approved but also future desalination projects approved under the WIIN Act authority.

From FY2018 to FY2021 (i.e., prior to enactment of the IIJA), Congress approved $12 million per year in annual discretionary funds for desalination project grants under Section 4009(a) of the WIIN Act. The $250 million in the IIJA represents a significant increase in funding for desalination projects under this authority. Although the IIJA funds are likely to facilitate the completion of smaller desalination projects eligible for this funding, some larger desalination facilities are expected to cost several hundred million dollars to construct, and the administrative limitations that Reclamation has previously applied to the program have capped individual project awards at $20 million. Additionally, unlike the Title XVI funding in the IIJA, there is no carve-out of IIJA desalination funds for larger facilities that are exempt from administrative caps. The prior cap for desalination projects was established administratively (i.e., it was technically *not* provided in law under the WIIN Act); thus, Reclamation may revisit this policy. Any such change, along with decisions related to the timing and distribution of these funds, may be of interest to Congress in its oversight capacities.

Ecosystem Restoration

Reclamation has performed aquatic ecosystem restoration and other environmental mitigation activities in the Reclamation states; however, Reclamation often conducted these activities to fulfill requirements in federal laws (e.g., for the conservation of ESA-listed species) or pursuant to a site-specific authorization. These site-specific authorizations have included authorizations related to Reclamation projects and regional programs to benefit ecosystems and species in particular river basins. For example, the Water Supply, Reliability, and Environmental Improvement Act (P.L. 108-361) authorized DOI, including Reclamation, to implement ecosystem restoration projects and activities in the San Joaquin and Sacramento Rivers' Delta in California, and the Consolidated Natural Resources Act of 2008 (Section 515 of P.L. 110-229) authorized the Secretary of the Interior, acting through the Commissioner of Reclamation, to coordinate with states and federal agencies to implement the Platte River Recovery Implementation Program. Congress provided Reclamation with a broad aquatic ecosystem restoration authority under P.L. 116-260.

Section 1109 of Division FF of P.L. 116-260 (33 U.S.C. 2330c) authorized the Secretary of the Interior to enter into agreements with eligible entities to fund the design, study, and construction of aquatic ecosystem restoration and protection projects in Reclamation states. The projects must aim to improve the health of fisheries, wildlife, or aquatic habitat and may include habitat restoration and improved fish passage (e.g., dam removal, fish way construction).[59] The Secretary

https://www.usbr.gov/watersmart/desalination/index.html.

[58] P.L. 117-58, §40901(5)(B).

[59] With respect to a project that removes a dam or modifies a dam causing a reduction in storage or diversion capacity, the Secretary of the Interior must ensure compliance with requirements for certain aspects of the project before entering

of the Interior is to prioritize projects that are developed jointly by a diverse array of stakeholders, provide regional benefits that affect water resources management in two or more river basins, are part of a broader strategy to address aging facilities while ensuring continued project benefits, and restore ESA-listed anadromous fish species.

To initiate these projects, eligible entities must enter into an agreement with the Secretary of the Interior to pay no less than 35% of project costs and 100% of operation, maintenance, replacement, and rehabilitation costs. Eligible entities may include

- states, Indian tribes, irrigation districts, or water districts;
- state, regional, or local authorities with a water or power delivery authority;
- other entities or organizations that own a facility eligible for upgrade, modification, or removal;
- nonprofit conservation organizations acting in partnership with a previously listed entity for a project involving land or infrastructure owned by that entity;
- combinations of previously listed entities; and
- agencies established under state law for the joint exercise of powers.

The Secretary of the Interior also must ensure the project will not hinder existing water delivery obligations; will not negatively affect the environment; is consistent with trust responsibilities for federally recognized Indian tribes; complies with applicable treaties, compacts, and agreements; is in the federal interest; and complies with all federal and state laws.

Section 1109 of P.L. 116-260 authorized appropriations of $15 million annually from FY2022 through FY2026. Reclamation requested $1 million for FY2022 to establish criteria for the Aquatic Ecosystem Restoration Program and to allocate available funding to priority aquatic ecosystem restoration efforts, such as mitigation for endangered species and species recovery.[60] Reclamation stated it would structure program objectives to complement the climate adaptation and resiliency priorities in Executive Orders 13990 and 14008 and would develop a framework for the new program.[61]

In Section 40901 of the IIJA, Congress authorized $250 million for the design, study, and construction of aquatic ecosystem restoration and protection projects in accordance with Section 1109 of Division FF of P.L. 116-260 (33 U.S.C. 2330c). Congress appropriated this funding over five years (FY2022-FY2026) in Division J of the IIJA. The IIJA provided the first appropriations for the Section 1109 authority.

As noted, the $250 million appropriation for the Aquatic Ecosystem Restoration Program constitutes the authority's first funding. Reclamation will need to take basic administrative steps to stand up the program before spending this funding. Implementation guidelines for the program could raise issues of congressional interest, such as how entities approach Reclamation with project proposals, what type of agreement is signed between Reclamation and entities, and how

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into a funding agreement. For the design or study of such project, the Secretary of the Interior must receive consent from the dam owner. For the construction of such project, the Secretary of the Interior must identify eligible entities that receive water or power from the facility; notify each eligible entity of the project request; and not receive, within 120 days of notification, a written objection to the project by one or more eligible entities that collectively receive at least a third of the water or power from that facility.

[60] Reclamation, *FY2022 Bureau of Reclamation Budget Justifications*, 2021, p. BW-10, at https://www.usbr.gov/budget/.

[61] Executive Office of the President, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," 86 *Federal Register* 7037-7043, January 20, 2021; Executive Office of the President, "Tackling the Climate Crisis at Home and Abroad," 86 *Federal Register* 7619-7633, January 27, 2021.

funds will be distributed and prioritized. For precedents, Reclamation could consider the U.S. Army Corps of Engineers (USACE) Continuing Authorities Program (CAP) for aquatic ecosystem restoration (Section 206 of the Water Resources Development Act of 1996, as amended; 33 U.S.C. §2330).

Cooperative Watershed Management Program

Subtitle A of Title VI of the Omnibus Public Land Management Act of 2009 (P.L. 111-11 as amended, 16 U.S.C. 1015 et seq.) authorized the Cooperative Watershed Management Program (CWMP), which provides funding to form watershed groups in the West that develop local solutions to address water management needs. These groups are self-sustaining, consensus-based stakeholder groups. Funding recipients must be grassroots, nonregulatory entities that address water availability and quality issues within a watershed, represent a diverse group of stakeholders, and are capable of promoting water supply reliability.[62]

As of 2021, CWMP funding supported two separate phases for projects. Phase I funds watershed group development and watershed restoration projects, providing funds for start-up costs, restoration planning, and project design. Phase II funds implementation of watershed management projects, providing cost-shared assistance to watershed groups to implement projects.[63] Reclamation awarded $7.5 million in funding for the establishment and development of 84 watershed groups and $2.9 million for the implementation of 19 watershed management projects from 2012 through 2020.[64]

In Section 40901 of the IIJA, Congress authorized $100 million for watershed management projects in accordance with Title VI, Subtitle A, of P.L. 111-11 (i.e., CWMP). Congress appropriated this funding over five years (FY2022-FY2026) in Division J of the act. Congress provided no instructions for how Reclamation should allocate these funds.

As with other Reclamation appropriations in the IIJA, the CWMP funds represent a significant influx of funding relative to recent years. Congress may be interested in the level of demand for the IIJA's CWMP funds, as well as how much funding Reclamation releases for these projects in future grant announcements and any administrative changes to the program in light of the IIJA's additional funding.

Watershed Health Improvement

In Section 40907 of the IIJA, Congress directed the Secretary of the Interior to establish a program by November 15, 2022, to award competitive grants to eligible applicants for the design, implementation, and monitoring of multi-benefit habitat restoration projects. These projects aim to improve watershed health in a river basin that is adversely impacted by a Reclamation water

[62] For more information, see Reclamation, WaterSMART, "Cooperative Watershed Management Program," at https://www.usbr.gov/watersmart/cwmp/index.html.

[63] Phase I projects may receive assistance of up to $50,000 per year for a period of up to two years (i.e., $100,000 total), with no nonfederal cost share required. Phase II projects receive up to $300,000 per applicant and require a nonfederal cost share of at least 50% of project costs. The funding caps are less than those authorized in the Omnibus Public Land Management Act of 2009 (P.L. 111-11), which authorized three phases: Phase I (with maximum funding of $100,000 per year over a maximum of three years); Phase II (with maximum funding of $1 million per year over a maximum of four years); and Phase III (with maximum funding of $5 million per year over a maximum of five years).

[64] Reclamation, *FY2022 Bureau of Reclamation Budget Justifications*, 2021, p. BW-71, at https://www.usbr.gov/budget/.

project. Eligible applicants may include states, tribal or local governments, organizations with power or water delivery authority, regional authorities, or nonprofit conservation organizations.

Projects must provide one or more of the following objectives: ecosystem benefits; restoration of native species; mitigation against the impacts of climate change on fish and wildlife habitats; protection against invasive species; ecosystem restoration; enhancement of commercial, recreational, subsistence, or tribal ceremonial fishing; and enhancement of river-based recreation. The federal cost share for projects is limited to 50% but may be up to 75% for projects where the water conservation and habitat restoration benefits account for at least 75% of the project cost.

In Section 40901 of the IIJA, Congress authorized $100 million for these multi-benefit projects to improve watershed health, in accordance with Section 40907 of the IIJA. In Division J of the act, Congress appropriated this funding over five years (FY2022-FY2026).

In establishing and implementing this new program, Reclamation will need to determine administrative guidance on the application process for grants, how funds will be distributed and prioritized, and how Reclamation intends to conduct oversight of this funding. It is unclear whether this section authorizes funding for modifications at Reclamation project sites (as the Section 1135 CAP authority does for USACE);[65] if it does not, Congress may consider whether to amend the authority to provide for such modifications. Congress also may be interested in how this program will complement or duplicate existing funding for restoration at site-specific Reclamation projects and other programmatic authorities, such as Reclamation's Section 1109 ecosystem restoration authority (see "Ecosystem Restoration," above).

Indian Water Rights Settlement Completion Fund

Indian water rights settlements stem from Indian reserved water rights, first recognized by the Supreme Court in *Winters v. United States* in 1908.[66] Under the *Winters* doctrine, when Congress reserves land (i.e., for an Indian reservation), it implicitly reserves water sufficient to fulfill the purpose of the reservation.[67] Although *Winters* effectively provided many Indian tribes with senior water rights, the quantification of these rights is in many cases undetermined. In lieu of litigation to quantify Indian water rights, negotiated settlements have been the preferred means among many (including the federal government) for resolving Indian water rights disputes.[68] These settlements can be attractive because they include terms and conditions that resolve long-standing uncertainty and end conflict by avoiding litigation.

Many Indian water rights settlements require congressional approval and/or federal funding for implementation. As of late 2021, 38 Indian water rights settlements had been federally approved, with total estimated costs in excess of $8.0 billion.[69] Congress often supports these settlements with discretionary funds in annual appropriations bills and has appropriated mandatory funding

[65] Section 1135 of WRDA 1986, as amended; 33 U.S.C. §2330. The U.S. Army Corps of Engineers (USACE) Continuing Authorities Program (CAP) authorizes USACE to restore environmental quality through modifications at either a USACE project site or other locations that have been affected by the construction or operation of a USACE project.

[66] *Winters v. United States*, 207 U.S. 564, 575-77 (1908).

[67] Some tribes also have time immemorial rights to water resources based on tribal water uses that preceded the establishment of reservations. These rights are commonly referred to as *aboriginal* water rights.

[68] For more information on Indian water rights settlements in general, see CRS Report R44148, *Indian Water Rights Settlements*, by Charles V. Stern.

[69] CRS estimate as of December 2021.

for certain settlements.[70] Congress typically specifies funding agencies and vehicles in authorizing legislation, with most settlements funded by Reclamation or the Bureau of Indian Affairs (or both).

In Division G, Section 70101, of the IIJA, Congress established an Indian Water Rights Settlement Completion Fund in the Treasury of the United States and provided that, on the date of the IIJA's enactment, the Secretary of the Treasury shall deposit $2.5 billion into this fund, to remain available until expended. Subsection 70101(c) of the IIJA authorized the Secretary of the Interior to use these funds "for transfers to funds or accounts authorized to receive discretionary appropriations, or to satisfy other obligations identified by the Secretary of the Interior, under an Indian water settlement approved and authorized by an Act of Congress before the date of enactment of this Act." This provision appears to allow the Secretary of the Interior to transfer resources from the new fund to any enacted Indian water rights settlement, based on secretarial determinations, as long as the settlement was enacted prior to November 5, 2021.

The IIJA funding for Indian water rights settlements offsets a major area of Reclamation budgetary needs that is not addressed elsewhere in the bill. However, because Congress provided no specific criteria for the Secretary of the Interior to use in allocating funds and did not designate a timeframe for allocations, the IIJA leaves a number of important determinations to secretarial discretion, including allocations among agencies implementing settlements and within the settlements themselves. These determinations could be a subject for congressional oversight, along with related prioritization criteria that differentiate among settlement awards. Some in Congress also may be interested in how this new fund affects the status and need for other Indian water settlement funding, such as annual discretionary funding and/or the mandatory Reclamation Water Settlements Fund (which currently expires in FY2030 and has been proposed for extension over various timeframes).

Authorization-Only Provisions

Congress included several *authorization-only* provisions (i.e., authorizations without a corresponding appropriation) in the IIJA. These related to rehabilitation of the pumping plant at Grand Couleee Dam (Section 40113), pumped storage hydropower (Sections 40335 and 40336), and groundwater recharge (Section 40910). Congress also included one section (Section 40909) clarifying the use of previously appropriated coronavirus relief funding for Reclamation project cost shares. These provisions are discussed below.

Pumped Storage Hydropower

Reclamation and the Federal Energy Regulatory Commission (FERC) both have authorities to permit nonfederal hydropower development at Reclamation facilities. Reclamation permits this development via Lease of Power Privilege for small conduit and hydropower-authorized dams at its facilities, while FERC is charged with permitting hydropower at Reclamation dams not authorized for hydropower. As with the division of responsibility for Reclamation dams, pumped storage hydropower projects involving Reclamation reservoirs are subject to either the FERC permitting process or Reclamation's Lease of Power Privilege process, based on whether the Reclamation facility was originally authorized for hydropower development.

[70] This includes mandatory funding of $120 million per year, from FY2020 to FY2029, which was appropriated by Congress in 2009 under Title X of P.L. 111-11.

Title V, Sections 40335 and 40336, of the IIJA both deal with Reclamation and FERC's authorities for pumped storage hydropower development. Section 40335 clarifies that Reclamation has the sole authority to develop pumped storage hydropower at facilities involving only Reclamation reservoirs (i.e., regardless of whether these facilities were authorized for hydropower). Section 40336 lays out specific requirements that Reclamation must adhere to before it can permit a specific proposed Lease of Power Privilege project—the Banks Lake Pumped Storage Project at Roosevelt Lake and Banks Lake in Washington. (Because of Section 40335, this project would now be under Reclamation's exclusive jurisdiction). To proceed with this project, the lessee and the Secretary must enter into an agreement with and make certain accommodations for the Confederated Tribes of the Colville Reservation and the Spokane Tribes. Both tribal reservations border Lake Roosevelt and possess water rights for waters involved in this development.

In Section 40113 of the IIJA, Congress included a project-specific pumped storage hydropower funding authorization for Reclamation. Congress authorized $100 million in nonreimbursable budget authority for Reclamation to rehabilitate the John W. Keys Pump Generating Plant, a pumped storage plant that originally came online in 1951 at Grand Coulee Dam in Washington. Typically, these rehabilitation costs would be reimbursed by project power users.

The aforementioned pumped storage provisions in the IIJA would have the combined effect of shifting some of these activities to Reclamation and potentially facilitating this type of power development in certain locations. Congress may be interested in the extent to which Reclamation increases pumped storage projects and generation by implementing these provisions and to what extent they generate interest in similar development elsewhere.

Groundwater Recharge Authority

Groundwater storage, aquifer recharge, and similar projects are increasingly viewed as an option in lieu of (or in addition to) traditional water development projects or as a means to reduce groundwater pumping. Reclamation has some authorities to facilitate groundwater storage projects and aquifer recharge, storage, and recovery efforts, including authority to provide financial support for groundwater storage projects under Section 4007 of the WIIN Act.[71] In Section 40910 of the IIJA, Congress authorized the Secretary of the Interior to provide technical or financial assistance for, participate in, and enter into agreements—including agreements with irrigation entities—for groundwater recharge, aquifer storage and recovery projects, and water source substitution for aquifer protection projects.[72] For a project to receive construction assistance under this authority, it must meet the same criteria as the WIIN Act project requirements under Section 40902(a)(2)(C)(ii) of the IIJA.[73] That section stipulates that to receive funding, the Secretary of the Interior must first find that (1) a project is technically and financially feasible, (2) sufficient nonfederal funding is available for the nonfederal cost share, (3) a project is in the public interest, and (4) the project is recommended for construction. Congress provided no appropriation for this new authority in the IIJA.

If Congress chooses to appropriate funds for this authority, it could allow Reclamation to fund groundwater storage projects beyond those that might qualify for construction assistance under

[71] For example, Division FF, Title XI of P.L. 116-260 included new flexibilities for Reclamation to support aquifer storage and recharge efforts with project facilities and water. Reclamation also has authority under Section 4007 of the WIIN Act to provide financial support for both surface water *and* groundwater storage projects. For additional information, see CRS Report R45259, *The Federal Role in Groundwater Supply*, by Peter Folger et al.

[72] P.L. 117-58, §40910(a).

[73] P.L. 117-58, §40910(c) and (d).

Section 40902 of the IIJA (see **Table 1**). This provision also appears to provide new authority to fund aquifer recharge and source water substitution projects and could expand Reclamation activities in these areas.

Nonfederal Cost Sharing for Reclamation Projects

Nonfederal Reclamation project sponsors and other Reclamation project partners are required to share the costs of many Reclamation projects and grants. For example, WIIN Act water storage project sponsors must pay for 25%-50% of the total costs for these projects, depending on project type. In Section 40909 of the IIJA, Congress provided that the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund (i.e., holding funds previously appropriated for Coronavirus Disease 2019 response/recovery under the American Rescue Plan Act of 2021 [P.L. 117-2]) may be used for Reclamation project cost-share requirements.[74] Specifically, Congress directed that the Coronavirus State Fiscal Recovery Fund may be used for "matching requirements" for authorized Reclamation water projects and that both funds may be used for "matching, maintenance of effort, or other nonfederal expenditure requirement[s]."

The enactment of these provisions may allow Reclamation cost-sharing partners to use federal funds for some or all of their portion of costs for water resources projects receiving assistance from the IIJA, depending on how the Department of the Treasury (who oversees the funds) interprets the provisions.[75] Congress may be interested in any specific guidance on these provisions, in particular which specific projects and programs qualify for this support and the extent to which the use of these funds facilitates expedited project implementation.

Initial Spending Plan and Other Developments

In the past, Reclamation has allocated funding appropriated by Congress in *spending plans* or *work plans* and has indicated its intent to continue to operate in this manner for IIJA funding. Reclamation released its Initial Spend Plan for IIJA funding for FY2022 on January 14, 2022.[76] The document allocated the portion of funding available in FY2022 (i.e., $1.66 billion). It did not allocate funds in equal shares to each category of projects compared with their overall allocation in the IIJA (**Table 2**). For instance, some of the more established, ongoing Reclamation programs and projects (e.g., Title XVI water recycling/reuse and Rural Water Projects) received FY2022 spending plan allocations in excess of their overall IIJA Reclamation funding allocation (in terms of percentage of the total allocation), while other new authorities received no funding in the Initial Spend Plan. These programs are expected to be funded in future years, after program guidance and related funding criteria are established. In addition to funding for items outlined in the IIJA, Reclamation's Initial Spend Plan also set aside funding for administrative activities

[74] For more on these funds, see CRS Insight IN11665, *The American Rescue Plan Act, Section 9901—The Coronavirus State Fiscal Recovery Fund*, by Grant A. Driessen; and CRS Insight IN11664, *The American Rescue Plan Act, Section 9901—The Coronavirus Local Fiscal Recovery Fund*, by Grant A. Driessen.

[75] Regulations released in late January 2022 indicated that Treasury would provide further guidance to recipients on the scope of projects and expenses covered by this provision, but as of the date of this report, no such guidance was available. Department of the Treasury, "Coronavirus State and Local Fiscal Recovery Funds," 87 *Federal Register* 4416, January 27, 2022.

[76] Department of the Interior, Bureau of Reclamation, *Implementation of the Bipartisan Infrastructure Law: Initial Spend Plan*, January 14, 2022, at https://www.usbr.gov/bil/docs/spendplan-2022/Reclamation-BIL_Spend_Plan_2022.pdf. Additional related documents are available at https://www.usbr.gov/bil/index.html.

($49.8 million, or 3% of Initial Spend Plan funding) and a flexible reserve to be used on "emerging requirements" ($281 million, or 17% of Initial Spend Plan funding).

Reclamation's Initial Spend Plan also provided an initial summary of how various programs would be implemented. Specifically, it noted whether individual projects would receive funding via internal formulation by Reclamation, applications in response to funding opportunities (i.e., grants), or some combination of the two.[77] The Initial Spend Plan also provided a timeline for activities associated with some new and existing program and outlined initial strategies for tracking program and project performance.

Table 2. Bureau of Reclamation IIJA Funding: Initial Spend Plan and Distributions

(funding in millions of dollars)

Program/Project	Total Funding in IIJA for FY2022-FY2026 (% of IIJA Funding)	Initial Spend Plan Funding for FY2022 (% of Spend Plan Funding)	How Will Funding be Distributed?
Water Storage, Groundwater Storage, Conveyance Projects	$1,050.0 (13%)	$210.0 (13%)	Internal Formulation
Small Surface Water & Ground Water Storage Project Grants	$100.0 (1%)	—	Funding Opportunities
Aging Infrastructure (general)	$3,000.0 (37%)	$100.0 (6%)	Application Periods
Aging Infrastructure: Critical Facilities	$100.0 (1%)	$2.5 (<1%)	Application Periods
Aging Infrastructure: Carey Act Dams	$100.0 (1%)	—	Application Periods
Rural Water Projects	$1,000.0 (12%)	$420.0 (25%)	Internal Formulation
Title XVI Water Recycling and Reuse	$550.0 (7%)	$245.0 (15%)	Funding Opportunities
Title XVI Water Recycling and Reuse: Large-Scale Projects	$450.0 (6%)	—	Funding Opportunities
Desalination Projects	$250.0 (3%)	—	Funding Opportunities
Safety of Dams Projects	$500.0 (6%)	$100.0 (6%)	Internal Formulation
WaterSMART Grants	$300.0 (4%)	$160.0 (10%)	Funding Opportunities
WaterSMART Grants: Natural or Nature-Based Features	$100.0 (1%)	—	Funding Opportunities
Lower Colorado River Drought Contingency Plan	$250.0 (3%)	$50.0 (3%)	Internal Formulation
Upper Colorado River Drought Contingency Plan	$50.0 (<1%)	—	Internal Formulation
Cooperative Watershed Management Program	$100.0 (1%)	$18.0 (1%)	Funding Opportunities

[77] The main example of this Reclamation discussed in its spend plan is its new program providing for critical maintenance of aging infrastructure, which it expects to fund via an application period for eligible, interested project sponsors.

Aquatic Ecosystem Restoration and Protection	$250.0 (3%)	—	Funding Opportunities
Watershed Health Improvement	$100.0 (1%)	—	Funding Opportunities
Colorado River Endangered Species Recovery	$50.0 (<1%)	$8.5 (<1%)	Funding Opportunities
No Explicit Funding in IIJA			
Reserve for Emerging Requirements	NA	$281.2 (17%)	NA
Administrative Activities	*[$240.0] (3%)*[a]	$49.8 (3%)	NA
Total	**$8,300**	**$1,660.0**	

Source: CRS, based on P.L. 117-58 and Bureau of Reclamation, *Implementation of the Bipartisan Infrastructure Law: Initial Spend Plan*, January 14, 2022.

Notes: Percentages may not add due to rounding. Does not include Indian water rights settlement funding. NA=Not Applicable.

a. The IIJA caps the portion of funding that may be used for administrative expenses at 3%.

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