



Meeting: **Reservoir Committee & Authority Board**
Agenda Item 3.3

April 17, 2026

Subject: **Review of Excess Capacity Conditions with Reclamation**

Requested Action:

Receive information on upcoming negotiations with the U.S. Bureau of Reclamation on an Excess Capacity Agreement which is expected to proceed consistent with existing federal law and policy regarding guaranteeing physical capacity in federal facilities for conveyance of Sites water.

Detailed Description/Background:

The Sites Project Authority is preparing to begin negotiations with Reclamation on an Excess Capacity Agreement (ECA) that would serve the functional role of a long-term conveyance arrangement for Sites water through federal facilities. Some Sites Participants have asked whether dedicated, contractually reserved capacity within federal facilities could be secured for Sites water.

Based on staff's review of existing law and Reclamation policy, there is no current legal framework that provides for a permanent or dedicated reservation of federal conveyance capacity for non-federal water. Instead, federal authorities provide for the conveyance of non-federal water in federal facilities only when excess capacity is available, and subject to the protection of authorized project purposes and other legal obligations. The ECA framework is therefore the appropriate and legally viable path for conveyance of Sites water in federal facilities.

Key Considerations

1. Existing Federal Authorities Do Not Provide for Dedicated Capacity for Non-Federal Water - Reclamation may contract for the conveyance or storage of non-federal water in federal facilities only under specific statutory authorities, most notably the Warren Act of 1911 and related excess-capacity policies. These authorities authorize use of federal facilities only when there is capacity available after meeting the needs of authorized project purposes. These laws and policies do not authorize Reclamation to permanently allocate or reserve a fixed share of federal conveyance capacity to non-project water. Securing such a dedicated allocation would require new or amended federal authority, which would introduce legal, policy, and stakeholder risks and would be outside the current scope of negotiation with Reclamation.

2. Existing Requirements Are Protective of Sites Participants' Interests and Consistent with the Contractual Framework Long Contemplated for the Project - Under current federal policy, any use of excess capacity is subject to requirements that protect authorized project purposes, environmental obligations, and existing contractual commitments. These protections align with the Sites Project's planned operations.
3. Federal Conveyance Facilities Have Historically Accommodated Non-Federal Water Under Excess Capacity Arrangements - Reclamation has historically entered into Warren Act and similar agreements to allow the conveyance of non-federal water through federal facilities when capacity is available. Federal conveyance systems, including the Tehama-Colusa Canal, have periodically conveyed non-federal water under these authorities. This demonstrates that the existing excess-capacity framework provides a viable and established mechanism for third-party use of federal facilities without requiring a dedicated allocation of capacity.

Prior Action:

None

Fiscal Impact/Funding Source:

Negotiation of the Excess Capacity Agreement is to be conducted within the budgeted funds currently authorized by the Board.

Staff Contact:

Jerry Brown

Attachments:

Attachment A – Warren Act 43USC523

43 USC 523: Storage and transportation of water for irrigation districts, etc.

Text contains those laws in effect on April 8, 2026

From Title 43-PUBLIC LANDS

CHAPTER 12-RECLAMATION AND IRRIGATION OF LANDS BY FEDERAL GOVERNMENT

SUBCHAPTER XIII-SALE OR LEASE OF SURPLUS WATERS, WATER POWER, STORAGE CAPACITY, AND WATER TRANSPORTATION FACILITIES

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§523. Storage and transportation of water for irrigation districts, etc.

Whenever in carrying out the provisions of the reclamation law, storage or carrying capacity has been or may be provided in excess of the requirements of the lands to be irrigated under any project, the Secretary of the Interior, preserving a first right to lands and entrymen under the project, is authorized, upon such terms as he may determine to be just and equitable, to contract for the impounding, storage, and carriage of water to an extent not exceeding such excess capacity with irrigation systems operating under section 641 of this title, and individuals, corporations, associations, and irrigation districts organized for or engaged in furnishing or in distributing water for irrigation. Water so impounded, stored, or carried under any such contract shall be for the purpose of distribution to individual water users by the party with whom the contract is made: *Provided, however,* That water so impounded, stored, or carried shall not be used otherwise than as prescribed by law as to lands held in private ownership within Government reclamation projects. In fixing the charges under any such contract for impounding, storing, or carrying water for any irrigation system, corporation, association, district, or individual, as herein provided, the Secretary shall take into consideration the cost of construction and maintenance of the reservoir by which such water is to be impounded or stored and the canal by which it is to be carried, and such charges shall be just and equitable as to water users under the Government project. No irrigation system, district, association, corporation, or individual so contracting shall make any charge for the storage, carriage, or delivery of such water in excess of the charge paid to the United States except to such extent as may be reasonably necessary to cover cost of carriage and delivery of such water through their works.

(Feb. 21, 1911, ch. 141, §1, 36 Stat. 925 .)

EDITORIAL NOTES

REFERENCES IN TEXT

The reclamation law, referred to in text, probably means act June 17, 1902, ch. 1093, 32 Stat. 388 , popularly known as the Reclamation Act, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 371 of this title and Tables.

SHORT TITLE

The act of Feb. 21, 1911, which enacted sections 523 to 525 of this title, is popularly known as the "Warren Act".