

THE BUREAU OF RECLAMATION  
AND  
THE DROUGHT RELIEF ACTS OF 1977 AND 1988

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ABSTRACT

Drought conditions in widespread portions of the Western United States occurred in 1977 and again in 1987 and 1988. In each case, the Congress of the United States responded by passing legislation directing the Bureau of Reclamation to mitigate the effects of the drought through financial aid and resource management.

The Drought Act of 1977 and the Reclamation States Drought Assistance Act of 1988 are essentially repetitive, differing in some implementation constraints and in some areas of emphasis. Both acts are inadequate to address the emergency nature of drought programs due to time-consuming Federal restrictions that are not waived, a lack of existing directives for implementing contingency plans, and a myriad of conflicting local, state, and Federal laws and policies. The drought crisis has passed before programs can be implemented to conserve or redistribute scarce water resources or to provide financial aid. The paper compares the two acts and provides suggestions for more appropriate legislation response for future droughts.

INTRODUCTION

The drought relief acts of 1977 and 1988 were both designed to respond to a national drought emergency and the economic, social, and environmental hardships that ensued. The Emergency Drought Act of 1977 (Public Law 95-107) was intended to mitigate the effects of widespread drought conditions in the United States during 1976 and 1977. Authorities granted to Reclamation under the Disaster Assistance Act of 1988 (Public Law 100-387) were largely patterned after sections of the Act of 1977 and were in response to a drought cycle that began in 1987.

Although similar in intent, the acts differed in their emphasis and authorization of programs, the effects of administrative and legislative restrictions on program

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implementation, and the availability of funding. Reclamation was able to provide some relief from the effects of drought. Still, our response has been much less than we, the public, or the Congress would wish.

Both the 1977 and the 1988 acts contain serious shortcomings in their ability to address emergency conditions. This paper compares the two acts and concludes that emergency drought legislation, by its nature, cannot provide the timely and equitable relief desired. The paper closes with a proposal for the future--a way to *plan* for drought emergencies before they occur.

#### SUMMARY OF DROUGHT ACT AUTHORITIES

Both the Act of 1977 and the Act of 1988 authorized Reclamation to undertake actions to augment, utilize, and conserve water on Reclamation projects, most Indian irrigation projects, and some other, non-Federal irrigation projects. The emphasis of the Act of 1977 was to provide loans to irrigators for minor structural actions (such as digging wells and lining irrigation canals) to augment water supplies and for management actions to facilitate water markets or conservation. In comparison, the Act of 1988 emphasized nonstructural solutions such as water conservation, water banking, and management measures. Authority was denied to use loans for any construction. This change reflects the prevailing preference for nonstructural solutions to water-related problems. Nevertheless, the potential for construction solutions was not entirely eliminated in the 1988 act; Reclamation was authorized to use funds for construction.

Drought program implementation occurred rapidly in 1977 and, at best, sporadically in 1988. Two circumstances may be implicating. In 1977, the drought act was passed at the beginning of the irrigation season but not until the end of the season in 1988. Further, Reclamation was able to publish rules and regulations implementing the act authorities much more quickly in 1977.

Procedural constraints associated with publishing the rules were more rigorous in 1988 due to law and policy not in effect at the time of the 1977 drought. The most telling sign of delay associated with procedural constraints is the swiftness with which implementation rules were published in the "Federal Register" after the acts were signed by the President. The Emergency Drought Act of 1977 was signed on April 7, 1977, and rules were

published on April 14, 1977. By contrast, the Disaster Assistance Act of 1988 was signed on August 11, 1988, but rules were not published until the following year--April 10, 1989.

The Act of 1977 was passed at the beginning of the irrigation season--early enough to allow some decisionmaking concerning that year's use of water and to partially mitigate the effects of the drought. Further, Congress worked with the Department of the Interior while the legislation was being drafted; therefore, the rules were ready for publishing at the time the bill was signed. More importantly, several legislative and administrative initiatives were prescribed after the 1977 act, and these initiatives constrained early implementation of the 1988 act. Language in the 1977 act, recognizing the drought crisis as an emergency, exempted actions under the Act from the assessment requirements of the National Environmental Policy Act. Only one procedural constraint remained for development of rules for the 1977 act--an Inflation Impact Statement as required by Executive Order 11821 (which has since been rescinded). By working with the Congress, Reclamation was able to complete that analysis quickly, determining that the action did not fall under the requirements of the executive order. (There was, however, one important delay in implementing the 1977 loan program. Reclamation does not have internal capability to process loan applications from individuals and, consequently, the Farmers Home Administration (FmHA) processed loan applications for Reclamation. A memorandum of agreement between the two agencies was not completed until August of 1977, thus delaying drought mitigation actions authorized by the Act.)

By contrast, the Act of 1988 was unable to affect water supply issues in the year it was passed due to the late summer enactment of the bill. Nevertheless, the rules for implementation of the Act were not published in the "Federal Register" for another 8 months! Some of the delay can be attributed to the fact that the Bureau of Reclamation was in the midst of a major reorganization, with the normal attendant disorientation. However, the major reason for the delay was the need to complete analyses of procedural details that were not required at the time of the 1977 act. The 1988 act required Reclamation to consider the National Environmental Policy Act and also required an analysis of the Federal Paperwork Reduction Act, the Regulatory Flexibility Act, and a Regulatory Impact Analysis as required by Executive Order 11291. The Federal Paperwork Reduction Act commanded the most time because clearance was required

from the Office of Management and Budget for the public reporting burden. That approval was not granted until shortly before the rules were published.

The effect of delayed publication of the rules would normally have been critical to implementation of programs in 1988. But, due to another aspect of the legislation, it proved to be inconsequential. Although the Congress authorized expenditures of \$25 million for the implementation of the 1988 act programs, no monies were appropriated. Reclamation was expected to reprogram funds; but, funds were not available for that purpose. Some otherwise budgeted activities were reprogrammed to conduct studies directed toward water conservation. However, due to the lack of appropriated funds in 1988 and 1989, no loans were made available to water users for conservation and management programs, and no minor construction was performed by Reclamation to obtain alternative water supplies (such as reservoir pumping from dead or inactive pools).

In comparison, within 30 days of enactment of the 1977 law, Congress appropriated \$100 million for the implementation of programs. Thirty million dollars of additional funding was appropriated for disbursement from the Reclamation Emergency Fund for drought mitigation. That year, Reclamation was able to provide \$32.4 million in reimbursable loans to irrigation districts, water districts, and public utility districts in 10 of the Western States hardest hit by drought. An additional \$42 million was provided for other drought mitigating activities including nonreimbursable loans to states and expenditures for fish and wildlife mitigation. Clearly, in 1977, the Congress was not constrained by the massive Federal budget deficits of today and had more flexibility to provide funds for drought relief.

Other comparisons between the Acts of 1977 and 1988 are as follows:

## Emergency Drought Act of 1977

1. Areas of the United States eligible for assistance are designated by the President or the Secretary of the Interior.
2. Reclamation was authorized to establish a water bank to buy and sell water.
3. Water supplies could be augmented through construction loans.
4. Authority of the Secretary of the Interior under the Emergency Fund Act of 1948 was broadened to allow the obligation of nonreimbursable monies up to \$1 million for eligible non-Federal projects.
5. Nonreimbursable funds up to \$1 million could be disbursed to states for general water management activities. Up to \$10 million was authorized to purchase water for fish and wildlife mitigation on a nonreimbursable basis.
6. Existing payment obligations for capital costs and/or operation and maintenance payments could be deferred and added to the remaining repayment period.
7. Reclamation was to conduct studies to find ways to mitigate the effects of drought recurrence and report the findings to the Congress.

## Disaster Assistance Act of 1988

1. Areas of the United States eligible for assistance require declaration of drought emergency by the affected state's governor and must meet the eligibility requirements for assistance under rules promulgated by the Department of Agriculture.
2. Reclamation was authorized to bring together willing buyers and willing sellers of water supplies but was not authorized to establish a water bank.
3. Water supplies could not be augmented through construction loans.
4. and 5. Loans are reimbursable or nonreimbursable in accordance with current law and policy. Non-Federal projects are eligible for loans only if they are irrigation projects. Fish and wildlife mitigation loans were nonreimbursable. The Act does not mention the Reclamation Emergency Fund.
6. Existing capital cost repayment obligations are deferrable but could not be added to the remaining repayment period.
7. Reclamation shall report to the Congress about the programs implemented under the Act, expenditures, and provide recommendations for administrative and legislative initiatives to mitigate the impacts of future droughts.

It is important to note that in the legislation of 1977, the Congress asked for proposals about ways to alleviate the effects of future drought. Although Reclamation mentioned the need for standing drought legislation in its final report, a comprehensive program was not proposed. Now the Nation has suffered another series of drought years. Again, the Congress has asked for answers about appropriate ways to mitigate drought.

#### WHY DROUGHT EMERGENCY LEGISLATION IS INEFFECTIVE

Timely implementation of drought programs is critical. Mitigation efforts can be effective only if water management initiatives are inaugurated early in the water diversion season. Individuals, irrigation districts, water projects, and public entities must develop strategies and coordinate actions to find prudent ways to cope with drought-induced water shortages. If emergency legislative authorities and program implementation issues are unknown at the time that these strategies are developed, knowledgeable decisionmaking about available alternatives is not possible.

The prudent irrigator plans ahead. Markets must be identified, and crop production plans must be devised for those markets. Contracts must be signed, financing arranged, and other preparations made before the planting season begins. All of these arrangements are made under conditions of faith that the weather will be good for growing, that markets will provide an adequate return, and that there will be enough water. The wise irrigator takes whatever actions are necessary to reduce risks.

Under adverse conditions, even the most prudent irrigator can be hurt. The extent of water shortages caused by drought are not known at the time most of the arrangements for crop production are made. Winter precipitation in most areas of the West--the precipitation that spells the difference between a normal year with adequate water supplies and a drought year--comes in the late winter and early spring. February and March snowfall can mean the difference between economic prosperity or devastation. The technology is not available to accurately predict precipitation levels for each local area.

Carryover water supplies in Bureau of Reclamation reservoirs alleviate the effects of drought most years if the drought is not prolonged for too many successive years and if water allocations are appropriate to meet all water requirements. If designed using acceptable

hydrological rule curves, reservoir sizes can provide adequate water for three consecutive drought years. Each reservoir's annual water requirements are based upon use estimates at the time of construction. However, actual water needs may have changed considerably due to new cropping patterns or collateral water uses--such as streamflow releases for fish and wildlife. Nevertheless, one year of drought usually does not create water shortages at most Reclamation projects, although it may have significant impacts in neighboring, nonproject areas. If a drought year is followed by another year of drought, project operations may need to change. After three consecutive years of drought (a situation that we may now be entering), the water availability situation becomes desperate--reservoirs have been emptied of carry-over storage and there is no winter precipitation replacement.

To be truly effective, Federal emergency drought legislation must, by definition, be broad enough to encompass the idiosyncracies of all projects. Not all projects can be helped by promoting water marketing or water banking because state law may be constraining or water may not be physically available for banking. Most projects can be assisted by water conservation programs and by minor construction, but by the time legislation is passed and funding is available, it is too late. Studies for drought mitigation are appropriate, but they do not, in themselves, mitigate the effects of drought when that drought is occurring; implementation of study findings can alleviate effects, but often after the fact. By addressing the problem of drought through emergency legislation, the Congress can do little more than provide compensation for losses that have already occurred.

We believe that the intent of the Congress was to help those suffering from drought. Nevertheless, the very nature of drought renders eleventh-hour legislation ineffectual.

#### RECLAMATION'S PROPOSAL

Water shortages are not the same as drought. Areas where water is over-appropriated experience water shortages even in so-called normal years. Many of these areas could provide adequate supplies if water conservation programs, tailored to fit the local conditions, are implemented. By contrast, drought-induced water shortages occur when precipitation is significantly less than normal, affecting soil moisture content, evaporation rates, and storage water supply and carryover.

In considering the possible means for dealing with drought, Reclamation is now formulating a two-stage program. First, a conservation program would target operational efficiency and flexibility to optimize the use of available water supplies, but would consider all other means to conserve water in each project area. Second, a drought contingency plan to minimize economic and environmental hardship when droughts occur and designed with local interests and conditions in mind would then be developed once conservation plans are complete. Standing legislation would provide the Secretary of the Interior with the authority to "trigger" contingency plans when indicated by drought conditions and when requested by the governor of the affected state or states.

As envisioned, conservation programs would be developed and implemented using existing Reclamation programs and new initiatives. Reclamation would work with Federal projects to find means to implement water conservation as a standard of doing business. Both structural and nonstructural means to better use and conserve water supplies would be developed through an interactive dialogue with water users, state and Federal entities, and other interested parties.

The potential for water savings is a key feature of Reclamation's ongoing activities and is a focus of the agency's mission. Operation and maintenance activities, project planning investigations, research activities, loan programs, and other existing programs have been directed to emphasize the potential of innovative water conservation actions in problem solving. Other programs such as the System Optimization and Joint Use program, the Water Management and Conservation program, and the water conservation plans required of irrigators by the Reclamation Reform Act of 1982 all contain elements that promote the efficient and effective use of limited water resources through conservation. These programs could be used to design a site-specific conservation plan for each project area.

To assure the availability of up-to-date information concerning water conservation options, Reclamation is also proposing a new initiative to develop a water conservation center. The center would provide us with the capability to take a leadership role in fostering water use and management stewardship. The center would become a source of technical, legal, and institutional information for those desiring to plan and implement a water conservation program. The primary action of the center would be an aggressive education demonstration



program to promote a "holistic" approach to water management and conservation opportunities. The center would cooperate with other Federal agencies, universities, irrigation districts, cities, states, professional societies, and others to develop and promote water conservation.

Contingency plans would consist of agreements with the many water-related interests associated with Federal Reclamation projects, projects for which Reclamation has administrative authority, existing river basin compacts, and other interested non-Federal parties. Consultations would be held with state and local interests including municipalities, fish and wildlife agencies, and others to come to agreement about the potential uses of water under various shortage conditions. Contingency plans could include a myriad of actions including water banking, use of purchase options, agreements for prioritization of limited supply distribution, use of dead or inactive storage, and special plans to protect wildlife refuges, vegetation, and fish and wildlife resources. Further, during formulation of contingency plans, Reclamation would consult with other Federal agencies that could be called upon to provide emergency assistance such as the Farmers Home Administration and Small Business Administration. Some options may require special Federal legislation to permit the temporary actions; and, in those cases, legislation would need to be enacted as part of the contingency planning process.

Contingency plans are useless unless they can be implemented quickly. Therefore, we intend to ask the Congress for standing legislation for the Secretary of the Interior to activate the contingency plans when a prediction of drought occurs in accordance with the definition of drought conditions that will be contained in each contingency plan. The standing legislation and/or the rules to implement that legislation would also address the regulatory requirements of the National Environmental Policy Act, the Federal Paperwork Reduction Act, Executive Order 12291 (requirements for Regulatory Impact Analyses), the Regulatory Flexibility Act, the Reclamation Reform Act, and rules to guide the definition of repayment requirements and capability and loan financing. Thus, procedural constraints that have delayed implementation of drought relief programs would be avoided.

In pursuing this program with the Congress, Reclamation is mindful of several realities. The foremost reality is that Western water law, contracts, and river basin compacts must be observed. However, the public--both

authorized water users and other interested parties--must be included in the development of both conservation and contingency plans. Another reality is that the public tends to be concerned about water shortages only when they are occurring. During times of normal water, our national priority for water resource planning is lowered. When many other national problems take precedence, it may be difficult to find the funding support to implement this proposal.

#### SUMMARY

The inadequacies of the drought relief acts of 1977 and 1988 lie not in the intent of the acts but the circumstances that the Congress was trying to address. Drought is an emergency; once the drought begins, it is too late to start designing relief programs and accommodating procedural constraints.

Reclamation believes that the best solution to avoiding drought-induced damages is to be prepared for emergency action. Such preparation includes the best utilization of existing water supplies even when supplies are plentiful (a conservation program) and having standing emergency plans available for implementation by the Secretary of the Interior when a drought cycle is imminent (contingency plans). Using this two-stage program, the Nation can be better assured that we are using our available resources wisely and that we can respond to an emergency.

Reclamation will be presenting the proposal outlined above to the President and the Congress in the spring of 1990 in our final report on actions taken to fulfill the Disaster Assistance Act of 1988. That report will include suggested legislative and administrative initiatives to manage future droughts. Unless we are ready, the Drought Disaster Act of 1994 or 1996 or 2003 will look depressingly similar to the drought acts of 1977 or 1988, and we will again be talking about how we were not prepared. Reclamation doesn't want to mitigate damages next time; we want to curtail them!