

DEPARTMENT OF THE INTERIOR
Bureau of Reclamation

**Buy America General Applicability Public Interest Waiver:
For Previously Planned Projects under P(3) Programs Implemented to
Mitigate the Colorado River Basin Drought**

1. Summary

Agency: Department of the Interior, U.S. Bureau of Reclamation

Proposed Waiver: The Department of the Interior (DOI or the Department) Bureau of Reclamation (Reclamation) is proposing a public interest, general applicability previously planned project waiver for manufactured products under the Build America, Buy America Act (BABA) requirements, pursuant to Section 70914(b)(1) of the Infrastructure Investment and Jobs Act (Public Law No. 117-58) (BIL/IIJA), for a limited set of recipients under Reclamation’s Colorado River Basin conservation and efficiency programs.

This waiver applies to expenditures incurred on or after the effective date of the waiver for non-domestic manufactured products associated with awards or amendments both (a) planned and designed prior to the enactment of BABA, and (b) awarded or amended by DOI during the waiver period, under three (3) “Colorado River Basin projects” identified below in Section “3. Description of Colorado River Basin Projects,” funded by Reclamation in accordance with BIL/IIJA section 40906 (Drought Contingency Plan Funding Requirements) and Inflation Reduction Act (Public Law No. 117-169) (IRA) section 50231 (Bureau of Reclamation Domestic Water Supply Projects), section 50233 (Drought Mitigation in the Reclamation States), and section 80004 (Emergency Drought Relief for Tribes). If such expenditures arise out of awards or amendments issued by DOI *prior to* the waiver period, then only the covered expenditures made during the waiver period may be covered.

Awards and amendments under this waiver are anticipated to begin construction on or after the effective date of the waiver but no later than September 30, 2026. The waiver would not apply to construction materials or products which the NIST Manufacturing Extension Partnership has determined to have a readily-available domestically-manufactured equivalent which matches specifications for those projects that were planned and designed prior to the project funding announcements.

The waiver will allow these grantees to continue previously planned infrastructure projects as DOI transitions to full implementation of BABA in a timely manner.

Waiver Level: General Applicability Waiver, Colorado River Basin Projects identified below in Section 3 of this waiver.

Length of the Waiver: DOI is waiving the Buy America Preference requirements for manufactured products on associated awards and amendments obligated by DOI from the date of final waiver approval until September 30, 2026. For awards or amendments obligated prior to the effective date of the waiver, this waiver would cover expenditures made after the effective date and for the remainder of the period of performance of the award. Awards or amendments obligated during the waiver period will be covered for the remainder of the period of performance of the award.

Waiver Justification Summary: This waiver will allow a transition period for Colorado River Basin projects that are mitigating drought to implement the queue of projects previously planned and designed prior to BABA implementation. These previously planned and designed projects will provide benefits to the Colorado River System in short order to support the stabilization and long-term sustainability of the operations of the Colorado River System. In addition, this waiver will provide a clear timeline to allow recipients time to identify and assess domestic sources of manufactured products for various infrastructure projects that are still in planning and design phases, while maintaining the ability to respond to critical drought conditions through prompt project implementation of previously planned and designed projects that are anticipated to begin construction before September 30, 2026.

2. Background

The climate crisis and historic drought conditions in the western United States are significantly straining water supplies, affecting public health and safety, food production, hydropower generation, ecosystems, and wildfire management. This summer's heat waves and wildfires are evidence of the potential impacts to come. Over the last two decades, Department leaders have engaged with Colorado River Basin project partners on various drought response operations. Reclamation is using the best available science and actively collaborating with water users across the Colorado River Basin to determine the best ways to meet this increased conservation need. The historic funding committed by the Biden-Harris Administration in the BIL/IIJA, and the IRA provide resources for water management and conservation efforts in the Colorado River Basin and other basins experiencing comparable levels of long-term drought. Prompt implementation of this funding is critical to help mitigate the immediate impacts of the drought.

Reclamation's Colorado River Basin projects, funded by various assistance programs help ensure the availability of clean water for drinking, agriculture and other economic activities, recreation, and ecosystem health. Given the urgency of the drought conditions, public health and safety cannot afford any delays to the Colorado River Basin projects identified in this proposed waiver.

Reclamation is committed to the implementation of Buy America Preference while staying mindful of its responsibilities to work with states, Tribes, and local entities as they plan for and implement actions to prepare for and mitigate drought and increase water supply reliability. The western United States is currently experiencing unprecedented drought conditions, and the National Weather Service is forecasting on-going and persistent drought across the western United States, driving the need for accelerated actions to respond to drought and critical water shortages. The Colorado River Basin Conservation projects create new water supplies, decrease water demands, and create environmental benefits, all resulting in drought preparedness.

Therefore, it is imperative that these actions be implemented in the quickest and most cost-effective way possible.

3. Description of Colorado River Basin Projects

The total amount to be obligated for Colorado River Basin projects is estimated to be approximately \$3.5 billion by the end of fiscal year 2026, when IRA funding expires and is no longer available for obligating infrastructure project funds. This includes an approximate total of \$2 billion for infrastructure; and a total expenditure of approximately \$1.5 billion for short-term conservation activities, which do not typically include infrastructure, but support shoring up elevations in Colorado River reservoirs towards the long-term. The Colorado River Basin is located in the western United States and occupies an area of approximately 250,000 square miles. The Colorado River provides immeasurable value to over 40 million people in two countries, seven U.S. states, two Mexican states, and 30 Native American Tribes. Approximately 1,400 miles long, the Colorado River flows through the states of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and the Country of Mexico (Mexico). The Colorado River supplies drinking water to millions of people, irrigates millions of acres of crops, produces billions of kilowatt-hours of hydroelectricity annually, flows through national parks and recreation areas visited by millions of people annually, and provides habitat for fish and wildlife. The water conservation infrastructure programs that will improve the operation, management, and oversight of the Colorado River through this waiver will benefit the many state, local, and tribal communities throughout the Colorado River Basin.

The three (3) Colorado River Basin Projects subject to this waiver are limited to the following projects:

- **Lower Basin System Conservation and Efficiency Program.** This program leverages funding provided by Section 50233 of the IRA. The actions taken are generally associated with short-term water conservation projects and activities that shore up elevations in reservoirs, and long-term water conservation efficiency and infrastructure projects such as building or improving pipelines, desalination, effluent reuse, irrigation efficiency and improving local water supplies.
- **Salton Sea Agreement.** This program will expedite the State of California's 10-year plan and enable urgent water conservation needed to protect Colorado River reservoir storage volumes amid persistent climate change-driven drought conditions. The type of projects funded under this agreement will be mainly those that address air quality to protect public health and restore habitat and will require building infrastructure such as water pipelines and holding basins.
- **Upper Basin System Conservation and Efficiency Program.** This program seeks out projects in the Upper Division States of Colorado, New Mexico, Utah, and Wyoming towards water saving actions and environmental restoration projects. The types of projects associated with this program are water conservation projects including short-term conservation programs that shore up reservoir elevations, and long-term solutions such as reuse of industrial water, recycling of municipal supplies, improvement of

distribution system efficiency to reduce consumptive use, and reductions in municipal landscape irrigation or indoor use, and environmental restoration projects.

4. Waiver Justification

This waiver seeks to advance the phased implementation of the Buy America preference for Colorado River BIL/IIJA and IRA funded projects, while providing flexibilities for previously planned projects. It is critical that Reclamation take proactive and expedient measures to address the effects of drought throughout the Colorado River Basin, to build resiliency as quickly as possible. Infrastructure projects of this nature are planned and designed years in advance of application. Without this waiver, projects that initiated planning or design prior to the implementation of the Buy America preference requirements for manufactured products would be required to redesign elements of the project, thereby causing substantial delays in project construction, and adding to project costs. In order to narrow this waiver as much as possible while balancing the urgent need to secure the stability and sustainability of the Colorado River Basin, this waiver would only apply to those pre-planned projects. Projects that have not yet been planned and designed would not be eligible for this waiver.

Ongoing Adjustment to New Requirements: Since the implementation of Buy America Preference in 2022, Reclamation staff and Colorado River Basin stakeholders have been on the front lines providing technical assistance to manufacturers so that they are able to identify whether their manufactured products meet the 55% domestic cost sourcing requirements for manufactured products. Reclamation funded water infrastructure projects tend to be highly engineered and involve multiple companies and products that are sourced globally as well as domestically. Often water users and utilities standardize products used to increase operational efficiency and depend on long-standing maintenance agreements with manufacturers they trust and depend on for the life of a product. As a result of perceived sourcing challenges and adjustments to domestic sourcing requirements, Colorado River partners expressed concerns of significant delays due to the need to redesign and consider product re-assessments. Based on drought conditions and the immediate need for water supplies to serve communities, these projects cannot afford delays in project implementation.

The Colorado River projects funded in accordance with the BIL/IIJA and IRA emphasize the need to prioritize and take robust actions to reduce climate pollution, increase resilience to the impacts of climate change, protect public health, and conserve our lands, waters, oceans, and biodiversity. Further, funding for projects that address these issues expires at the end of fiscal year 2026. This critical deadline provides an opportunity to fund and implement projects that are already planned and designed so that drought impacts can be addressed in a short timeframe. Executive Order (EO) 14008 states, “The United States will also move quickly to build resilience, both at home and abroad, against the impacts of climate change that are already manifest and will continue to intensify according to current trajectories.” In addition, the Justice40 initiative, a requirement of EO 14008, is a government effort to deliver at least 40% of the overall benefits of certain government investments to disadvantaged communities that are marginalized, underserved, and overburdened by pollution. As a program that develops critical

clean water infrastructure and conservation, the Colorado River Basin projects work to conserve water that is delivered 30 tribes and underserved farming communities along the Southern Border that meet the Justice40 initiative.

Based on drought conditions, the immediate need for water supplies to serve communities, the increase in project costs, delay of construction and increases in American water utility rates, Reclamation proposes that this waiver of the Buy America Preference manufactured product requirements is in the public interest to allow a period of transition for previously planned projects.

5. Anticipated Impact if No Waiver is Issued:

The Department of the Interior anticipates that, if no waiver is issued, Colorado River Basin conservation programs and investments will see significant delays in implementing projects that are already planned and designed, potentially resulting in important projects not getting built given the obligation deadline in Section 50233 of the IRA, if recipients must redesign projects after these stages have already been completed. The Department of the Interior foresees that the delayed implementation of the pre-planned Colorado River Basin projects will bring hardship to communities already experiencing adverse impacts from drought, including lack of adequate and clean drinking water sources for traditionally underserved communities. It may also result in delays for project implementation that would increase the likelihood that Lake Powell and Lake Mead storage would fall below critical elevations, further deteriorating water supply conditions in the Colorado River Basin and thwarting progress that could otherwise be accomplished under the BIL/IIJA and IRA regarding drought response actions.

Planning and development of water projects, including budgeting and market research, is a lengthy and complex process that generally begins years in advance of applying for federal grants for infrastructure projects. Absent a waiver, those projects that completed design planning would be required to redesign elements of the project, investigate potential domestic alternative products, revise engineering drawings, and bid specifications, and resubmit plans and specifications for approval, thereby substantially delaying the initiation of construction and adding to the cost of the project.

6. Expectation for the agency, award recipients, and industry during the waiver period

Reclamation is committed to its efforts in implementing Buy America Preference and will continue to support domestic manufacturing through funding projects that utilize American-made products and materials. During the period of this waiver, Reclamation will continue to add the Buy America Preference term to agreements and conduct outreach events with applicants, recipients, and stakeholders to educate the financial assistance community on the Build America Buy America requirements.

Reclamation anticipates continuing to work with grant recipients throughout the waiver period on outreach and education concerning the Buy America preference, to encourage market research and compliance wherever possible. Reclamation will continue to collect information from recipients on materials that cannot be sourced domestically in order to encourage

compliance amongst manufacturers. As time progresses, Reclamation anticipates that materials commonly used in water projects will be manufactured domestically. As market research develops, Reclamation plans to reevaluate the need for the waiver as often as necessary, based on material availability or changing drought conditions.

On an ongoing basis, Reclamation will review the correspondence with recipients of awards regarding materials difficult to source domestically. Reclamation will continue to investigate the domestic sourcing possibilities of manufactured products frequently used in these projects. This includes collaborating with other Federal agencies, including the National Drought Resiliency Partnership, with similar funded projects and coordinating to complete market research efforts.

Reclamation will continue to collaborate with the National Oceanic Atmospheric Administration's National Drought Information System (NIDIS) to monitor drought conditions. The NIDIS drought monitor is updated on a weekly basis, providing Reclamation with real-time detailed information on drought conditions throughout the western United States. During the waiver period, Reclamation will also identify whether drought conditions have abated to the point that this general applicability waiver is no longer justified. DOI will also work with the Environmental Protection Agency to analyze the outcomes of their request for information on products used in water infrastructure projects to better understand current availability and anticipated future supply of domestically produced products. At the conclusion of this waiver period, Reclamation expects the domestic supply of critical drought mitigation materials to improve, allowing recipients to transition to full compliance of the Buy America preference requirements of iron, steel, construction materials and manufactured products for the Colorado River Basin projects.

7. Assessment of Cost Advantage of a Foreign-Sourced Product

Under Office of Management and Budget (OMB) guidance including Memorandum M-24-02, *Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*, agencies are requested to assess "whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products" as appropriate before granting a public interest waiver. DOI's analysis has concluded that this assessment is not applicable to this waiver as this waiver is based on supply issues and availability of products.

8. Solicitation of Comments

Proposed Waiver: This notice posted on December 9, 2024, satisfies the requirement to publish any proposed Buy America waiver and provide the public with a reasonable period of time for notice and comment. The Department of the Interior seeks public and industry comment from all interested parties. Relevant information and comments will help the Department understand completely the facts and impacts surrounding this waiver request. This notice will be closed for comments on December 24, 2024. Comments can be sent to DOI_Grants_BuyAmerica_Waiver@ios.doi.gov. Please reference the associated project title in

the subject line of the email. Comments received prior to the public comment closing date will be reviewed and considered by DOI.

For more information on the Buy America Preference, please reference www.doi.gov/grants/buyamerica or MadeinAmerica.gov.