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MEMORANDUM

To: Regional Director PN, MP, LC, UC, GP
Attention: PN-1000, PN-3300, MP-100, MP-440, LC-1000, LC-4450, UC-100, UC-446, GP-1000, ~~GP-2100~~

From: Eluid L. Martinez
Commissioner

Subject: Policy for Terms of Contract

By memorandum dated May 19, 1993, subject, "Policy for Terms of Contracts," the Bureau of Reclamation (Reclamation) adopted the policy that the maximum term for new or renewed long-term contracts executed pursuant to Reclamation law shall be 25 years. The memorandum states that the purpose is "to better protect the interests of the United States while still adequately meeting the needs of water users, and to provide more operational flexibility and improved project efficiency." Exceptions to the maximum 25-year term are provided in the memorandum. These exceptions are: (1) where the law under which the contract is executed explicitly requires a term longer than 25 years, and (2) a strong justification can be provided to the Commissioner in which case an exception may be granted.

With respect to exception no. 2 above, no guidance for variance from the policy was provided. For this reason, I directed my staff to perform an analysis of the policy and, if appropriate, to develop such guidance.

The following justifications for variance are of two kinds. The first recognizes a category of non-water-related contracts which have no effect on operational flexibility or improved project efficiency. Since the 1993 memorandum, in practice, the maximum term of these contracts has been 25 years, and payment capacity has been used to determine if a repayment term less than 25 years should be applied. The justification requirement provided herein will also address use of payment capacity to justify a repayment term longer than 25 years.

The next justification applies to water-related contracting activities and requires a demonstration that this justification can be met before a variance can be granted.

Classification WTR 4.00
Project G.E.
Control No. 97007213
Folder I.D. 5642

Justification for Variance

Non-Water-Related Contracts

The length of the repayment period for non-water-related contracts, such as contracts for repayment of obligations incurred under the Reclamation Safety of Dams Act, the Rehabilitation and Betterment Act, the Drainage and Minor Construction Act, and the Small Reclamation Projects Act, will be based on capture of full payment capacity. The 1993 policy memorandum sets a maximum term of 25 years. The existing practice that if payment capacity is sufficient to pay in less than 25 years, the lesser repayment period will be utilized shall continue. If payment capacity identifies a longer term of contract is justified, and there are no other appropriate sources of district funds to repay the obligation, then a longer term of contract will be granted. Variance for such contracts must be supported by a basis of negotiation submitted for Commissioner approval.

Water-Related Contracts

Contracting entities should demonstrate that to effectively implement measures to improve project efficiency and/or operational flexibility, a contract for greater than 25 years would be required. The contracting entities must commit in the contract to undertake such measures. Detailed supporting documentation should be submitted for consideration. Such measures may include, among others, initiatives to effect water conservation, initiatives to facilitate water transfers, enhancement of instream flows, recreation, flood control, water reuse, desalination, protection of Indian trust assets, land resource management, fish and wildlife conservation and enhancement, and water quality protection and improvement.

Regions' bases of negotiation must contain for consideration an analysis of the financial advantages to the United States for either entering a contract term for longer than 25 years or entering a contract term for 25 years or less. This analysis should include whether the United States will be better or worse off in present value terms.

This memorandum does not repeal the existing policy establishing a 25-year maximum term of contract. It provides criteria for Reclamation to use in determining if a variance is justified as provided in the 1993 policy memorandum.

cc: Manager, Portland OR, Attention: LCA-1000
Manager, Yakima WA, Attention: UCA-1000

Manager, Boise ID, Attention: SRA-1000
Manager, Grand Coulee WA, Attention: GCP-1000
Manager, Folsom CA, Attention: CC-100
Manager, Fresno CA, Attention: SCC-100
Manager, Shasta Lake CA, Attention: NC-100
Manager, Klamath Falls OR, Attention: KO-100
Manager, Carson City NV, Attention: LO-100
Manager, Sacramento CA, Attention: CVO-100
Manager, Phoenix AZ, Attention: PxAO-1000
Manager, Yuma AZ, Attention: YAO-1000
Manager, Boulder City NV, Attention: LCDFO-1000
Manager, Boulder City NV, Attention: BCOO-1000
Manager, Temecula CA, Attention: SCAO-1000
Manager, Albuquerque NM, Attention: ALB-100
Manager, Grand Junction CO, Attention: WCN-CDeAngelis
Manager, Provo UT, Attention: PRO-100
Manager, Farmington NM, Attention: FCO-100
Manager, Salt Lake City UT, Attention: UC-600
Manager, Billings MT, Attention: MT-100
Manager, Grand Island NE, Attention: NK-AM
Manager, Loveland CO, Attention: EC-100
Manager, Mills WY, Attention: WY-100
Manager, Oklahoma City OK, Attention: TX-100
Manager, Bismarck ND, Attention: DK-100