United States Department of the Interior

BUREAU OF RECLAMATION
WASHINGTON, D.C. 20240

DEC 29 1978

IN REPLY
REFER TO: 740
32.

See Ltr dtd. 6/24/80

Memorandum

To: Regional Director, PN, MP, UC, LC, SW, UM, LM

From: Commissioner R. Keith Higginson

Subject: Irrigation Contracting Policies

I am hereby directing that the following policies and procedures be used in negotiating and proposing new, amendatory, or temporary irrigation water service and repayment contracts. In many cases these are a restatement of long-standing Reclamation policies that have, for one reason or another, not been uniformly implemented throughout the regions. Other policies are new and represent a tighter reading of the requirements of Reclamation law. However, it should be understood that the "ability to pay" concept remains the basic determinant of repayment and water service rates as it has in the past.

Because of the diverse methods now being employed by various regions in contracting for various services, it is expected that some minor revisions in standard contract language will be required to meet some of these requirements. I anticipate that there will be very few cases where exceptions to these policy guidelines will be necessary. Any such cases should be brought to my attention only after a good faith effort to comply with the guidelines has been made. In no instances will exception be made to the policy requirement that beneficiaries repay all operation, maintenance, and replacement costs and that water service contracts contain a 5-year rate adjustment clause.

A. All Contracts

All contracts shall refer specifically to and expressly incorporate by reference the Act(s) of Congress which authorize the construction of facilities and delivery of water provided for in the contract and all other relevant provisions of Reclamation law.

B. Irrigation Water Service Contracts

1. All new long-term water service contracts negotiated pursuant to section 9(e) of the Reclamation Project Act of 1939

or other water service contracting authority shall contain provisions requiring full payment of actual operation, maintenance, and replacement (OM&R) costs in advance of water delivery for said year. The advance payment of OM&R costs will be adjusted to actual costs in the subsequent annual OM&R billing. In addition, all new irrigation water service contracts shall contain provision for periodic review and adjustment of the rate for repayment of capital costs assigned to irrigation. Such rate will be included in all new contracts at the date of execution. The first adjustment of such rate will be at the first delivery of water, if more than 5 years after execution of the contract. Otherwise, adjustment will be 5 years after execution of the contract, and every 5 years thereafter, but synchronized with the regular 5-year review schedule of a given project, if applicable. All contracts containing provisions for water service shall include the rate adjustment clause described above. The original rate, and any subsequent adjustments, shall be no lower than the water users' ability to pay at the time the rate is set or adjusted. Payment capacity studies shall be confined to an area no larger than the service area of a unit (i.e., San Luis Unit, Bonneville Unit) within larger integrated projects or the project service area of smaller projects (i.e., Narrows, Dallas Creek). Where lands in a unit vary significantly by service areas (i.e., Garrison Diversion Unit), separate payment capacity studies will be done for each area.

2. The contingency allowance presently used in some regions for lowering payment capacity as an inducement to contract for water services has been determined to be unjustified. Under no circumstances will contingency reductions be made in computing payment capacity. Bureau procedures will be revised accordingly.

3. Water service contracts shall not authorize water deliveries in excess of the amounts specified by the feasibility report or authorizing act governing the project in question, and may authorize smaller water deliveries where that would promote conservation and more efficient use of water, and be consistent with applicable congressional directives. Either specific numbers or express reference to the amounts in the feasibility report or authorizing act shall be stated in the contract. Unless specifically provided in a long-term water service contract presently in force, contractors shall not receive a water supply in excess of that specified in the contract except under interim contract arrangements specified in item D of this memorandum. However, contracts shall reserve the right of the Federal Government to reduce water deliveries in dry and critical years.

4. In no case shall water rates in long-term contracts be adjusted to compensate water districts for funds contributed under the Contributed Funds Act to accelerate project construction. Bureau instructions will be revised to clearly prohibit such rate adjustments (including adjustments in ability to pay or water rate) to reflect the added expense to the district or water user to repay a loan, bond issue, or other means of financing a contribution to project construction.

5. Executed water service contracts are required prior to delivery of water from existing projects including those under construction. Executed contracts for water service from projects not under construction are required prior to start of construction.

C. Irrigation Repayment Contracts

1. Repayment contracts negotiated under section 9(d) of the Reclamation Project Act of 1939 or other repayment authority shall contain maps (attached to and expressly made a part of the contract by the text) which clearly define and designate the scope of the proposed works the United States is obligated to construct. The contract shall also specifically state the estimated cost (which will serve as a firm ceiling beyond which no obligation exists) and, in the case of distribution system repayment contracts, the number of acres to be served (which will also serve as a firm ceiling). Once executed, the terms in the repayment contract must be adhered to. Any changes in costs, system design, or increase in acreage to be served requires an amendatory contract, which shall be signed and executed prior to further construction. If such changes affect the cost ceiling, this office and the office of the Assistant Secretary - Land and Water Resources shall be informed immediately following Bureau knowledge of this fact by means of a written statement specifying proposed design changes, changes in cost estimates, reason for changes in the original contract, and other pertinent information. Without exception, decisions on amendatory contracts will be made only after thorough review and approval by this office, the office of the Assistant Secretary - Land and Water Resources, and the Solicitor.

2. Where a project is authorized to provide supplemental water service, contract terms shall provide for commencement of repayment at the end of the first growing season in which project water is used. A short development period will be allowed, if

necessary, on all lands not heretofore irrigated, including blocks of land not heretofore irrigated on projects authorized to provide both supplemental water and water to lands not heretofore irrigated. Development periods will be approved by the Secretary.

3. Executed repayment contracts with irrigation districts are required prior to commencement of construction of irrigation features of a Reclamation project.

4. Unless otherwise specified by law, contracts for repayment of distribution system facilities for the sole use of a particular water district must expressly recover all Federal costs (without interest) associated with the construction of such facilities. Contracts which do not provide for full repayment of such facilities will not be approved by this office unless the authorizing act specifically provides for allocation of a portion of the costs for repayment by other project users (i.e., power, municipal, and industrial).

5. Repayment contracts shall not obligate the United States to construct facilities that are not specified either in the authorizing statute or by reference in the authorizing statute to a specific feasibility report or as otherwise clearly authorized by the Congress. Repayment contracts shall not obligate the Federal Government to make expenditures beyond that authorized specifically by Congress in the authorizing statute. In any case, where the estimate of total Federal obligations exceeds the authorized cost ceiling as indexed for inflation, contracts will not be approved until adequate authority has been provided by the Congress.

6. Operating agreements, letters of intent to repay, or other pledges shall not be used as substitutes for firm repayment contract terms.

D. Interim Water Service Contracts

1. Regardless of payment capacity of the contractor, interim contract rates shall be sufficient to recover the actual costs of operation, maintenance, and replacement (including pumping power), and the project's (or unit's or division's) average share of capital

costs allocated to irrigation. The practice of using "postage stamp" rates (rates based on the canal or other facility from which water service deliveries will be made) shall be discontinued.

2. Where payment capacity studies indicate that the contractor has the ability to pay a water rate greater than that provided in a long-term contract between the contractor and the United States, and where no rate adjustment clause exists in the long-term contract, interim contracts shall be sufficient to recover--in addition to the cost of interim water service--that portion of the current cost (including capital) of deliveries of all water to the contractor not being recovered under the long-term contract. As an alternative, water may be delivered under an interim contract at a rate that covers only the cost of interim water services provided that the contractor amends its existing long-term contract with the United States to include the rate adjustment specified in paragraph 1 above.

3. Interim water service contracts with water districts having existing long-term water service or repayment contracts shall not substitute for those contracts in authorizing delivery of water. Necessary changes in long-term contracts shall be in the form of amendatory long-term contracts.

4. Any interim contracts providing for water service in excess of 2,000 acre-feet shall be reviewed by the Washington office of the Bureau of Reclamation. Interim contracts providing for amounts greater than 10,000 acre-feet shall be reviewed by the Washington office of the Bureau of Reclamation, the office of the Solicitor, and the office of the Assistant Secretary - Land and Water Resources. Interim contracts extending beyond 1 year will be reviewed by the office of the Assistant Secretary - Land and Water Resources. Each region shall prepare a report for the Secretary, annually, which identifies all interim contracts executed during the calendar year and which summarizes the terms of each contract; e.g., water rate, water quantity, length of contract and purpose of contract. The

standard articles included.
compliance @ 1-3.

Washington office of the Bureau of Reclamation will consolidate that report and submit it to the Secretary on or before December 31 of each year.

I Concur:

Assistant Secretary - Land and Water Resources

Date January 10, 1979