APR 08, 1992

Memorandum

To: Regional Director, PN, MP, LC, UC, GP
Attention: 100

From: Commissioner

Subject: Implementation of the Reclamation States Emergency Drought Relief Act of 1991 (Act) - P.L. 102-250. (Drought)

Given the severe and extended drought conditions in the West, it is important that we move quickly to implement those provisions of the subject Act (copy attached) which are needed immediately, for example: section 101 (providing assistance to willing buy-ers and sellers, participation in water banks); and section 102 (use of project and non-project water both within and outside authorized service areas, use of Federal facilities and contracts for temporary water supplies, storage and conveyance of non-project water inside and outside project service areas for M&I, fish and wildlife and agricultural uses).

To the extent the Act's provisions will be implemented through some form of contract, this policy memorandum provides interim implementation guidance for administering the contracting process in an expeditious manner (attached). This interim guidance is effective immediately. The Assistant Commissioner - Resources Management (ACRM) is in the process of developing additional interim guidance for implementing the Act, which will be the subject of subsequent policy memoranda from this office.

Authority to promulgate rules and regulations is provided by section 302 of the Act. The necessity for rules and regulations will be determined as we assess, based on input from ACRM and your offices, issues associated with interpretation and imple-mentation of the Act on a section-by-section basis.

Please advise ACRM of any activities which you contemplate undertaking to implement the Act. The purpose of this is to ensure Reclamation-wide consistency in the interpretation and application of the legislation and to collect required data for the expenditures and accomplishments report to be included in the annual budget. Additionally, to help us develop guidance that is workable and responsive to drought conditions, please provide any thoughts you have on the above-mentioned contracting policies to W-6400, with a copy to ACRM.

Each office should proceed as previously requested in assisting Governors' offices. The Act provides spending authority of $90 million in fiscal years 1992 through 1996. Since no funds have been appropriated, you should continue your efforts in reviewing drought funding requirements and advise the Assistant Commissioner - Program, Budget, and Liaison of workload and funding requirements for implementation of the Act.

I am also attaching a copy of a memorandum from ACRM to me with an attached preliminary analysis, in summary form, of each section of the Act. Comments and suggestions concerning the preliminary analysis and subsequent guidance as it becomes available should be directed to ACRM, with a copy to W-6500.

DENNIS B. UNDERWOOD

Attachments

April 7, 1992

Interim Contract Implementation Guidance

I. Service Contracts

1. Service would be provided pursuant to short-term (2-year maximum) contracts which would normally be independent of existing contracts.

2. Regions should initially submit a representative basis of negotiation along with a representative contract for approval by the Commissioner. Upon such approval, the delegations of authority for water service contracts would be applicable.

3. As a minimum, the rate for project water must be "at least sufficient to recover all Federal operation and maintenance costs and administrative costs, and an appro-priate share of capital costs, including interest on such capital costs allocated to municipal and industrial water," except that project water delivered to non-project landholdings shall be at full cost (as defined in section 202(3) of the RRA).

4. Water transfers involving purchases from willing sellers by willing buyers, with storage in or conveyance through Federal Reclamation facilities, could be accom-plished through a three-party contract among the seller, the buyer, and Reclamation, whereby the buyer pays the seller for the water and pays Reclamation for the storage or conveyance services. The same procedure could be implemented for water exchange arrangements.

5. Contracts/Agreements may be executed to facilitate participation in water banks.

II. Repayment Contracts

1. Funds appropriated for construction, management and conservation activities under Section 101(a) or for loans for purposes stated in section 103 will be covered under a repayment contract. Terms of contracts should be as short as possible and in no case may a contract under Section 103 exceed 15 years.

2. The Secretary must notify the Senate Committee on Energy and Natural Resources and the House of Representatives Committee on Interior and Insular Affairs in writing of any loans the Secretary intends to approve not less than 30 days prior to granting final approval. Accordingly, draft letters to the chairman of each Committee should accompany any loan proposal submitted by the Regional Director.

3. Section 103 provides that all loans approved by the Secretary, including those for irrigation purposes, shall be at the interest rate determined by the Secretary of the Treasury.

4. Except for matters explicitly covered in the Act, loan contracts and administrative processing may generally follow the existing Small Reclamation Projects Act loan procedures. Any such request must demonstrate the contractor's ability to fully repay the loan within the term of the contract.

5. Following approval of a basis of negotiation, repayment contracts should be processed under existing delegations of authority.

III. General Provisions.

1. All reimbursable costs incurred by the United States are to be repaid within the term of the contract.

2. Contracts will be for the sole purpose of carrying out the provisions of the Act.

3. Applicable interest rates may be obtained from D-5440.

4. No water purchases pursuant to section 101(c) are to be made until specific guidance to the contrary is issued.