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MEMORANDUM

To: Director, Operations
Attention: W-6000, W-6100
Director, Policy and External Affairs
Attention: W-1500
Director, Program Analysis
Attention: D-5000, W-5000, D-5200
Regional Director, PN, MP, LC, UC, GP
Attention: PN-100/3300, MP-100/440, LC-100,
BCOO-4400, UC-100/284, GP-100/2100

From: Eluid L. Martinez
Commissioner

Subject: Contracts and Repayment Policy

As you are aware, the Bureau of Reclamation is currently embarking on some major contracting activities that will continue to be highly visible for years to come. As Commissioner, I am dedicated to ensuring that Reclamation continues to fulfill its contracting responsibilities as well as consider the need for water supplies to meet growing demands for municipal, tribal, and environmental uses. Toward this end, over the past several years, we have implemented some major policies and initiatives to facilitate and to provide direction for these multiple areas of use.

The purpose of this memorandum is to summarize in one place these policies and initiatives and to express their importance in our contracting activities. This memorandum is not intended to modify, and should not be construed as modifying, the guidance set forth in the policy memoranda, statements, and redelegation referred to herein.

1. **Policy for Term of Contract.** In May 1993, Reclamation instituted the policy that the maximum term for new or renewed long-term contracts executed pursuant to Reclamation law would be 25 years. The purpose of this policy 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. The 1993 policy allowed for exceptions to be granted by the Commissioner; however, no criteria for an exception were provided. For this reason, I directed staff to perform an analysis of the policy and, if appropriate, to develop such guidance. In the end, criteria were developed which are provided in the September 11, 1997,

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Project	GF
Control No.	98009601

“Policy for Terms of Contract,” memorandum. Reclamation policy remains that contracts shall not be for a term longer than 25 years. However, the opportunity now exists for 40-year term of contracts if specific criteria are met.

2. **Delegation of Authority.** The January 4, 1994, memorandum, “Basis of Negotiation for New and/or Amendatory Water Service, Repayment and Related Contracts,” provided that approval of a Basis of Negotiation would be required for each contract having a term of more than 1 year. After assessing contract activities over the following 4 years, we determined that in order to be more efficient and expedient with contracts for small quantities of water and short terms of contracts, authority should be redelegated to the regional directors to approve and execute certain contracts. This redelegation has also served to free-up staff time to focus attention on the longer-term and more controversial contracts. This redelegation was issued March 3, 1998.

3. **Policy for Collecting Operating and Maintenance (O&M) Costs Associated with the Administration of Water-Related Activities.** When I first came on board, the concern was raised to me by numerous water users and from members of Congress that Reclamation was not following consistent practices for O&M costs assessed for services relevant to contracting activities. The September 26, 1997, memorandum set forth policy for implementation of an equitable fee.

4. **Municipal and Industrial (M&I) Conversion Policy Memorandum.** In August 1992, the Department’s Office of the Inspector General (OIG) issued a report concluding that Reclamation did not fully recover costs of construction of facilities that were originally built for irrigation, but are now used for M&I service. Reclamation did not concur with the OIG recommendation, whereupon the resolution was remanded to the Office of Program, Management and Budget (PMB). Reclamation staff worked with PMB staff to resolve the issue, and this was culminated with my signing the policy memorandum dated November 13, 1997. The policy issued under this memorandum facilitates the contracting process in those instances where water changes use from irrigation to some other use.

5. **Guidelines for the 1956 Act.** At my request, Reclamation and Solicitor’s office staff performed an examination of the Act of July 2, 1956, “Administration of Contracts Under Section 9, Reclamation Project Act of 1939.” Pursuant to the examination, policy dated September 3, 1998, has been issued which provides guidance when renewing water service contracts pursuant to the Act of 1956. This policy provides guidance on general conditions for either renewing a Section 9(e) water service contract or converting a water service contract to a Section 9(d) repayment contract.

6. **Water Transfers.** Under my direction, a team has been established to review water transfer principles and policies for both project and nonproject water. This team is reviewing the Department’s Principles as well as Reclamation’s policies and guidelines for water transfers. Legislative constraints to water transfers are another important area under review by the team.

The team will provide recommendations for revisions and remedies to facilitate such transfers. Thereafter, it is my intent that this team's recommendations will receive appropriate public review.

7. **Tribal Uses.** On February 25, 1998, I issued a policy statement entitled "**Indian Policy of the Bureau of Reclamation**" that consolidated the policies enunciated by previous Commissioners and those which I have promulgated during my tenure as Commissioner. A cornerstone of this policy is that Reclamation should actively seek partnerships with Indian tribes to ensure that tribes have the opportunity to participate fully in the Reclamation program as they develop and manage their water and related resources in order to implement their water rights settlements and meet their growing demands for water. The technical assistance activities of the Native American Affairs Program are designed to bridge the efforts of Indian tribes to obtain the benefit of the Reclamation program. Reclamation will continue to evolve contract and repayment policies to reconcile Reclamation policies with Indian needs.

No need for 'Bold'.

8. **Environmental Uses.** Reclamation has been successful in meeting water needs for environmental requirements through such measures as water purchases, exchanges, and transfers. We will commit to continue to explore these avenues as well as research to identify new, additional measures to meet environmental concerns.

In closing, I would like to address a question that often arises regarding contracting and National Environmental Policy Act (NEPA) and Endangered Species Act (ESA) compliance, and what is Reclamation's position regarding such compliance. It is Reclamation's position that all contract activities will continue to require NEPA and ESA compliance. The level of compliance will depend on the complexity of the Federal action.

If you have any questions regarding the above-listed policies or initiatives, please contact Ms. Sandie Simons at (303) 445-2902.

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