

June 5, 1973

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To: Regional Director, PN, MP, LC, UC, SW, UM, LM  
E&R Center--Codes 400, 700

From: Acting Assistant Commissioner

Subject: Compliance with Requirements of the National Environmental  
Policy Act for Certain Water Service Contracts and Repayment  
Contracts

This memorandum is to update policy regarding contractual provisions and timing for environmental statements to meet requirements of the National Environmental Policy Act.

When an environmental assessment results in a negative determination, the determination is to be submitted for processing in accordance with Reclamation Instructions Part 376.5.14. The negative determination will be processed prior to submitting the contract to the Department for approval. Except as discussed below, when an environmental statement is required, it should be filed in final form with the Council on Environmental Quality at least 30 days prior to processing the contract involved for departmental approval.

Normally the repayment contract or water service contract is written pursuant to the authorizing legislation. Procedures now being utilized would meet the requirements of the National Environmental Policy Act if the project involved is specifically covered in the environmental statement since the authorizing legislation precedes the authority to contract. Otherwise, an additional environmental statement may be required.

All other new water service and repayment contracts not covered above will be assessed to determine if contract execution will be the major controlling Federal action that will have significant impact on the environment. To the extent the contract is the controlling Federal action, an environmental analysis will be completed at least 30 days prior to approval of the contract form. This may include a negative determination when water deliveries under the contract have significant environmental impact.

Under certain conditions where long-term contracts are involved that could lead to significant environmental impact, contracts may be processed for approval after the draft environmental statement has been submitted to the Department. The environmental impact must be dependent upon subsequent Federal action and the contracts must provide that (1) water deliveries or construction will be contingent upon processing of a final environmental statement and Secretarial determination that such action is environmentally acceptable, (2) if the requirements of the National Environmental Policy Act have not been met within 5 years, the contract will be voided, and (3) at the option of the contracting officer, and until the requirements of the National Environmental Policy Act have been met, the water may be put to another use if such use has been determined to be more beneficial. Such provisions would place the responsibility on the potential water user and on the United States to obtain data and information pertinent to the environmental consequences. Such action also places the burden for costs of the environmental analyses on the beneficiary and minimizes the direct cost to the general public.

/s/ D. V. McCARTHY