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United States Department of the Interior

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MEMORANDUM

To: Regional Director, PN, MP, LC, UC, GP
Attention: PN-1000, PN-3300, MP-100, MP-440, LC-1000, BC00-4400, UC-100, UC-284, GP-1000, GP-2100

From: Eluid L. Martinez
Commissioner

Subject: Policy for Guidance on Interpretation of the Act of July 2, 1956, "Administration Of Contracts Under Section 9, Reclamation Project Act of 1939"

The purpose of this policy is to provide guidance when renewing water service contracts pursuant to the Act of July 2, 1956, "Administration of Contracts Under Section 9, Reclamation Project Act of 1939," (Act of 1956). This policy also states Reclamation's requirement for National Environmental Policy Act (NEPA) compliance and costs for contract activities.

The Act of 1956 provides for renewal, under certain conditions, of water-service type contracts written pursuant to Section 9(e) and allows for conversion of such contracts to Section 9(d) repayment contracts under certain mutually agreed-to conditions. A general condition that will apply to all such contracts is that before they may be renewed or converted, the contracts must contain language which provides for renewal or conversion, subject to such mutually agreeable terms and conditions. If such language does not exist, authority is hereby delegated to the regional directors to amend such contracts solely for this purpose prior to renewal.

The following identifies conditions under which the Bureau of Reclamation, on behalf of the Secretary of the Interior, will renew a water service contract or convert a water service contract to a repayment contract.

Conditions for Conversion from a Section 9(e) Water Service Contract to a Section 9(d) Repayment Contract.

- ▶ The present ability to pay must be greater than zero, or in lieu thereof, a willingness to pay may be considered.
- ▶ In situations where Reclamation delivers irrigation water from a Corps of Engineers project, there must be a completed cost allocation.

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- ▶ Except where otherwise provided by statute and assuming mutual agreement on terms and conditions, a Section 9(e) water service contract may be converted to a Section 9(d) repayment contract if the properly assignable remaining construction costs can probably be repaid to the United States within 40 years. This may be accomplished by entering an initial 25-year repayment period and a subsequent 15-year repayment period. At the end of the initial 25-year repayment period, the contract will be subject to renegotiation of all terms and conditions based on policy and law in effect at that time or a term of contract based on the September 11, 1997, "Policy for Term of Contract," memorandum may be negotiated.
- ▶ Where power assistance is not available, all costs allocated to irrigation must be capable of being repaid in a term not to exceed 40 years.

Depending upon the contract action, one of the following processes shall be followed.

A. Conversion from a Section 9(e) Water Service Contract to a Section 9(d) Repayment Contract with a Concurrent 9(d) Contract - Many contracts coming up for renewal have what is termed as Part A/Part B provisions. Part A provisions are obligations pursuant to a Section 9(e) water-service contract, and Part B provisions are obligations pursuant to a Section 9(d), repayment contract. For these types of contracts, our policy on conversion is as follows:

1. Deduct from the total costs allocated to irrigation, credits, payments, and contributions that have already been made.
2. The remaining amount, i.e., any unpaid portion of the costs allocated to irrigation, is the total remaining obligation.
3. A current ability-to-pay study will be performed to determine the amount available to be paid by the district during the repayment period of the concurrent Section 9(d) contract. At the end of the original Section 9(d) contract, either a new ability-to-pay study will be performed to determine the obligation for the term of the contract, or the amount paid under the concurrent Section 9(d) contract will be added to the ability-to-pay amount.
4. If the district enters an initial 25-year contract with a subsequent 15-year contract, the subsequent 15-year contract would be subject to renegotiation of all terms and conditions based on policy and law in effect at that time. Or, a term of contract based on the September 11, 1997, "Policy for Term of Contract," memorandum may be negotiated. The amount beyond the contractual amount will be paid by power assistance.
5. Five-year rate reviews will be based on Reclamation policy.

B. Conversion from a Section 9(e) Water Service Contract to a Section 9(d) Repayment Contract - This policy applies when there is no concurrent 9(d) contract.

1. Deduct from the total costs allocated to irrigation, credits, payments, and contributions that have already been made.
2. The remaining amount, i.e., any unpaid portion of the costs allocated to irrigation is the total remaining obligation.
3. A current ability-to-pay study will be performed to determine the amount remaining to be repaid under a new Section 9(d) repayment contract.
4. If the district enters an initial 25-year contract with a subsequent 15-year contract, the subsequent 15-year contract will be subject to renegotiation of all terms and conditions based on all laws and policies in effect at that time. Or, a term of contract based on the September 11, 1997, "Policy for Term of Contract," memorandum may be negotiated. The amount beyond the contractual amount will be paid by power assistance.
5. Five-year rate reviews will be based on Reclamation policy.

C. Renewal of a Section 9(e) Water Service Contract to a Section 9(e) Water Service Contract - This section applies to contracts that will be renewed as a water service contract.

1. Deduct from the total costs allocated to irrigation, credits, payments, and contributions that have already been made.
2. The remaining amount, i.e., any unpaid portion of the costs allocated to irrigation, is the total remaining obligation.
3. Perform a current ability-to-pay study to establish the district's annual charges for the renewed contract. (Some areas use cost of service to determine the district's annual charges.)
4. Perform 5-year rate reviews based on Reclamation policy.
5. Follow the above process for subsequent renewal contracts with appropriate credits to the allocated costs until either the ultimate allocated costs have been realized or conversion from a Section 9(e) contract to a Section 9(d) contract is effected.

Contractual Requirements

All contract activities, including those under the Act of 1956, will continue to require NEPA and Endangered Species Act compliance and costs for contract activities will continue to be based on the September 26, 1997, memorandum, "Policy for Collecting Operation and Maintenance Costs Associated with the Administration of Water-Related Contracting Activities."

Please insert this memorandum in Section II of your policy book for water service and repayment contracting.

You may direct any questions to Ms. Sandie Simons at (303) 445-2902.

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: LCD-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, Austin TX, Attention: TX-100
 Manager, Bismarck ND, Attention: DK-100