

*Policy Book*



# United States Department of the Interior

BUREAU OF RECLAMATION  
Washington, D.C. 20240

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## MEMORANDUM

**To:** Director, Office of Program Analysis  
 Director, Office of Operations  
 Director, Office of Policy and External Affairs  
 Regional Director, PN, MP, LC, UC, GP  
 Attention: 100, 400

**From:** Daniel P. Beard  
 Commissioner

**Subject:** Contracts and Repayment Policy

### Introduction

The Bureau of Reclamation's (Reclamation) past contracting practices have concentrated on defining repayment terms and on providing long-term assurances of water supplies to water users. As a corollary, Reclamation has not historically reserved for itself the flexibility to improve the management of existing projects, shift water supplies to meet growing demands for municipal and environmental uses, or address contemporary resource management needs. This has placed the United States in a disadvantageous position to respond to changing public values.

One of my primary objectives is to ensure that Reclamation's future contracting and repayment policies and procedures are in accord with our goal of being a premier water resources management agency. Flexibility contained in future contracts will be oriented to assist in achieving the Bureau's multiple objectives. Toward this end, we need to revise our policies and procedures to ensure that Reclamation has considerably more flexibility and discretion in the management of the water, land, and power resources associated with our projects than has historically been the case. Detailed guidance for implementing the policies set forth in this memorandum will follow as soon as possible. It is also of paramount importance that we keep emerging water needs, environmental concerns, and sound business practices at the forefront of our considerations.

### Alternatives to Contracts

Reclamation can maximize its discretion and flexibility by seeking alternatives to contracts whenever practical. Thus, if formal contractual arrangements for the recovery of reimbursable

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project costs or to protect the interests of the United States are not required, we will utilize less formal operating agreements, letters of intent, and other less restrictive documents to memorialize the terms and conditions of an agreement. Such instruments must be approved in advance, with concurrence by the Solicitor and the Assistant Secretary - Water and Science, by the Commissioner. Requests for approval to use these instruments should be addressed to the Program Analysis Office, which will promptly process such requests and obtain concurrence and comments from other organizational components as appropriate.

#### Agreement on Contract Terms

In order to avoid unnecessary litigation, we must ensure that the parties to the contract share the same understanding of contract terms. Therefore, where a party to a contract is engaged in litigation over the meaning of specific contract terms or otherwise has expressed disagreement with the Bureau of Reclamation's understanding of terms, the Bureau should not enter into a new contract containing those same terms. In such situations, the Bureau should insist that the parties resolve differences before entering into a new contract, and set out with specificity the meaning of the terms for the purpose of the new contract.

#### New or Renewal Contracts

With the foregoing precepts in mind, the following policies shall henceforth govern the negotiation and administration of new repayment contracts and new water service contracts including renewals, under the authority of Reclamation law, including, but not limited to: the Reclamation Project Act of 1939, the Water Supply Act of 1958, the Warren Act, the Small Reclamation Projects Act, and the Safety of Dams Act.

1. Contracts will ensure that the Federal investment and Reclamation's administrative costs are recovered in an effective and businesslike manner. When negotiating these aspects of a contract, consideration needs to be given to the full extent of Reclamation's cost recovery objectives and policies, and to all sources of repayment for a given project, not just to the narrow issues presented by a given contract.

2. Contracts will provide for the appropriate balancing of all water uses, including new water demands, recreation, instream flow needs, enhancement of fish and wildlife habitat and resources, and water quality. Contracts will be drafted in a manner that will permit and encourage water transfers to occur and aid in our objective of providing water to a broader spectrum of water uses.

3. Contracts will be written to avoid or eliminate non-essential explanatory recitals and other restatements of past agreements, accomplishments, or rights of parties other than the United States.

4. Contracts will promote improved water management and conservation and require water conservation plans (with implementation schedules) pursuant to the authority of section 210 of the Reclamation Reform Act of 1982 (RRA), as amended.

5. Pricing and rate-setting provisions will promote efficient use of project water supplies. Our pricing policy is to recognize market prices and/or the value of water in specific situations. We will rely less on cost-based or replacement cost-based methods of pricing and setting rates. In addition, wherever possible, we will eliminate or avoid using take-or-pay provisions, which tend to encourage excessive or unnecessary use of water.

6. Contracts will provide for reasonable beneficial use determinations by Reclamation and require that the inappropriate or wasteful use of water be eliminated. Contracts should also provide for suitable and effective enforcement actions in the event there is inappropriate or wasteful use of water.

7. Contracts will be written for the shortest possible term consistent with good business practices and effective water management. The working presumption is that this period is 25 years or less. Contractors might be offered a "menu" of possibilities from which they could select the most suitable terms. Rather than offering a 25 year contract for a specific quantity of water, the contractor could be offered a 5, 10, 15, or 20 year contract, with different quantities and repayment terms for each contract. Another possibility might be to avoid long term "dropdead" contracts, and develop short-term contracts of 10 years that could be renewed annually, providing the user with a more or less permanent 10 year contract. Under this approach, when the Government decided that it no longer desired to renew, the user would have 10 years to make other arrangements.

8. Contract negotiations will be in strict compliance with the RRA, the accompanying rules and regulations, and applicable policy, including the requirement to announce negotiations in advance, and will be conducted in a manner that provides opportunities for the public to observe and provide meaningful input.

9. Subject to delegation of authority and approval of a basis of negotiation, each Regional Director will be responsible and accountable for conducting contract negotiations and drafting proposed contracts.

10. Meetings held prior to the approval of the basis of negotiation for the purpose of gathering and exchanging factual information will be clearly identified as such and conducted in a manner that would not prejudice the pending approval of the basis of negotiation or the contract negotiations.

#### Amendatory Contracts

We will negotiate contract amendments to achieve as many of the preceding policy objectives as are applicable to a given situation as a condition of agreeing to the additional benefits sought by the water user. If Reclamation cannot obtain sufficient concessions of value to the United States to justify providing additional benefits to the water user, then we will exercise our option of simply not agreeing to contract amendments.

#### Repayment Contracts

Repayment contracts, although having a fixed repayment period, have implications lasting far beyond the original contract term. After payout of construction costs, water users often pay only O&M costs. O&M costs alone are not sufficient to maintain the services that are provided; replacement costs are major additional costs that have not always been collected. Thus, for paid-out repayment contracts, I want us to remedy the existing situations and avoid future situations where water users pay only a part of the costs associated with providing project benefits after payout of construction costs. There are at least three options available to address this problem: (1) charge for replacement costs, (2) levy a charge that is commensurate with the value of water, or (3) transfer title of the facilities to the water users. Water users must be encouraged to assume greater responsibility for all costs and to recognize the public values associated with Reclamation projects. I expect to see improved cost recovery that in turn will result in water prices that more nearly reflect market value and will encourage water conservation.

#### Preparation of Policies and Procedures

I am assigning the Director, Office of Program Analysis, in consultation with the Office of the Solicitor, the Director, Office of Operations, and the Regional Directors, to develop new policy guidance and procedures, and standardized contract provisions, to ensure the implementation of the above principles, and to analyze and recommend means for dealing with existing repayment contracts. Also, I am assigning the Director, Office of Program Analysis, to review Reclamation's beneficial use determinations. Your interest in and support for these important activities is appreciated.