

Eluid Martinez is the 14th Commissioner of the Bureau of Reclamation. A native son of New Mexico, Commissioner Martinez is a distinguished engineer with extensive experience in water resources administration, planning and flood protection. He served in the New Mexico Office of the State Engineer for 23 years and held the post of State Engineer and Secretary of the New Mexico Interstate Stream Commission.



Transfers of Reclamation Project Water from Historic Irrigation to New M&I Uses

Since the beginning of the federal reclamation program in 1902, the Bureau of Reclamation has developed water supplies in the 17 western states. Today, Reclamation is the nation's largest wholesale supplier of water, delivering about 30 million acre-feet annually to thousands of contractors who have contracted with Reclamation in accordance with federal law to receive water supplies developed by federal reclamation projects. To place this quantity of water supplied in perspective, it represents approximately 15 times the impoundment capacity of Elephant Butte Reservoir.

Reflective of the original purpose of the 1902 Reclamation Act and the history of the federal reclamation program, approximately 80-85 percent of the water supplied by Reclamation's projects is devoted to commercial irrigation. This is not surprising, given that the federal reclamation program was originally conceived of and designed by Congress as a means of providing economic development and stability at a time when the West was still being settled.

Today the face of the West is rapidly changing. Growing populations concentrated in urban centers, increasing demands for outdoor recreational opportunities, and public concerns for preserving and restoring wetlands, riparian habitat, and instream flows are, when combined with existing water uses, placing ever greater pressures on the West's limited

and finite water supplies. In the face of these circumstances, and in the face of the changing economics of irrigated agriculture, Reclamation has experienced in recent years, and expects to experience at an accelerated rate, proposals from its current contractors to sell Reclamation project water to which they are entitled, to new users and/or to convert existing irrigation uses to new uses, either temporarily or permanently.

I would like to share with you today a few observations about Reclamation's policies and practices regarding voluntary transfers or conversions of project water from historic irrigation to new municipal and industrial (M&I) uses. As you may know, this topic, as it applies to the Rio Grande Project, is being discussed as part of the ongoing mediation of the United States' lawsuit in Federal District Court to quiet title to the water rights for the Project. Because those negotiations are, by order of the court, confidential, I will not comment on them. Rather, I will discuss transfers on a generic, Reclamation-wide basis, with reference by way of example to the conversion of Rio Grande Project water to M&I uses only to the extent that transfers have already occurred or have been authorized pursuant to previously executed, publicly available contracts.

For the purposes of my remarks today, I define a "transfer of project water" as a transaction in which the contractor with which Reclamation has a contract for project water either leases or sells, on a temporary or permanent basis, all, or a portion of, the project water to which the contractor is entitled. The transfer may involve another individual or entity located outside of the contractor's water use boundaries. The water may be for same type of use as the contractor has made of project water or for a new type of use. A transfer also may involve another

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entity located within the contractor's water use boundaries for a different type of water use than the contractor previously has made of project water.

In addition, a "transfer of project water" may include a situation where a contractor converts project water from an existing use to a new use and delivers project water to the ultimate user.

The "transfer of project water" is not the same, and may or may not involve a "change of water rights" within the meaning of applicable state water law. Whether a given transfer of project water will require a change of water rights will depend, among other things, upon the decreed or permitted place of use and type of use of project water rights as compared to the new place of use or type of use to be made of project water. Determinations in this regard have to be made on a case-by-case basis.

I have directed a thorough review of Reclamation's existing water transfer policies and practices to see if they need to be expanded upon or otherwise improved.

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In 1988, then Assistant Secretary for Water and Science, Mr. Jim Ziglar, issued a policy for the transfer of Reclamation project water titled, "Principles Governing Voluntary Water

Transaction . . ." The principles were developed in response to a request of the Western Governors' Association in the previous year. The principles, seven in number, provided a broad policy framework for facilitating voluntary transfers of Reclamation project water between willing sellers and buyers.

In keeping with this framework, Reclamation's overall objective has been to facilitate voluntary transfers in a timely and economical manner. In addition, Reclamation may, in situations it deems appropriate, encourage parties to undertake voluntary transfers of project water. However, Reclamation will not compel transfers unless required by legislative directive or judicial decisions.

Transfers of Reclamation project water requires compliance with state water laws, compliance with federal laws (such as the National Environmental Policy Act), and will require Reclamation's advance approval unless that approval has been provided in current contracts. This will be true even in the case of contractors who have already retired their contractual repayment obligation to the United States.

I have directed a thorough review of Reclamation's existing water transfer policies and practices to see if they need to be expanded upon or otherwise improved. While this review is underway,

some steps have already been taken. For example, last November I issued a policy addressing the charges payable by contractors to Reclamation for project water which is converted from irrigators to M&I uses. The purpose of the memorandum was to provide a systematic approach in the determination of payable charges.

A primary objective of the policies articulated in my November memorandum is that the federal government should be no worse off financially than if a transfer of project water had not occurred. In the context of transfers of project water, it is not Reclamation's goal to maximize federal revenues. Nor is it Reclamation's goal to attempt to "recapture" past subsidies that may have been provided during the period in which the project water being transferred was used for irrigation. It is Reclamation's view that in many situations it will be appropriate for the federal government to seek only a portion of the dollars gained by the seller in a particular transaction. Simply put, I recognize that irrigators and our contractors cannot be expected to make water available for transfer to new M&I uses if they do not have a financial incentive to do so.

I would like to share with you one of our most recent initiatives regarding transfers of project water. It involves the Rio Grande.

The city of El Paso, with a population of 700,000, is located within the Project boundaries. The city of Juárez, Mexico, with a population of 1.5 million, is located just across the border. Historically, both El Paso and Juárez have drawn their municipal water supply from groundwater—the Hueco Bolson. Explosive growth in both cities has rapidly depleted the Hueco Bolson. Recent hydrologic data indicate the Bolson could be severely depleted within 20 years. Surface water would then become the primary source of municipal water supply. The Rio Grande—and Rio Grande Project water—is the only significant source of surface water in the area.

As a result of urbanization, demand for irrigation water has steadily decreased over the past 50 years, and demand for municipal water has steadily increased. In an effort to help the El Paso area keep pace with its need for municipal water, Reclamation, the El Paso County Water Improvement District #1, the City of El Paso, and other municipal water providers such as the El Paso County Lower Valley Water District Authority have worked together since 1941 in a series of four contracts, which have allowed them to obtain incremental amounts of project irrigation water to supplement their supply from the Hueco Bolson. The amount of water available under these four contracts is no longer sufficient to meet the area's critical need for water,

and as a result, they approached Reclamation and the El Paso District seeking a new contract which would provide a stable, long-term supply of a much larger quantity of municipal water.

Reclamation and the District determined that sufficient irrigation water would be available from the Project to meet the El Paso area's long-term needs, provided that:

- an appropriate contract could be negotiated authorizing the conversion of Project water from irrigation to municipal use, and
- landowners voluntarily choose to forego delivery of irrigation water to which they are contractually entitled.

The principal provisions of the fifth or new 1998 contract include:

- The term of the contract is 40 years.
- The contract is a master contract between the United States and the District. Third parties—the City and others—who wish to obtain a water supply must enter into a subcontract which complies with terms spelled out in the master contract.
- The price of water for buyers will be the sum of three components:
 - ◆ The District will receive its normal taxes and charges; an administrative fee to cover contracting costs; and an amount necessary to cover operation, maintenance, and replacement of its facilities.
 - ◆ Landowners who participate will receive negotiated forbearance payments in exchange for foregoing delivery of all or part of their contractual entitlement to irrigation water.
 - ◆ The United States will receive from the District an amount which is either 5 percent of the sum of the first two components, or \$5 for each acre-foot of water sold per year, whichever amount is greater.

As required by the 1920 Act, these federal revenues will be deposited into the Reclamation fund and placed as a credit to the Project to be applied toward future construction repayment obligations of the District to the United States, as may be authorized by Congress. This provision reflects the policies set forth in the November 1997 memorandum which I mentioned earlier.

Near-term implementation of the contract—over the next 10 years—could involve up to 50,000 acre-feet of water per year. Full, long-term implementation—over the next 30 years—could involve as much as 100,000 to 150,000 acre-feet per year. Benefits to the local area which will flow from this contract include:

- A badly needed stable municipal water supply for the El Paso area and its citizens.

- A real choice for landowners—keep lands in production or negotiate forbearance payments.
- Funds to help the District operate and maintain its system and replace aging facilities.

In summary, Reclamation is willing to work with any of its project water users to effect voluntary transfers of project water from historic irrigation to new uses in appropriate circumstances. Such transfers will require Reclamation's advance approval. We will endeavor to facilitate such voluntary transfers in a timely and economical manner.

Let me close with two observations about the quiet title litigation concerning the Rio Grande Project, because there appears to be some misunderstandings about the United States' position in filing this litigation. I attempted to clear up this issue in testimony presented to an interim committee of the New Mexico State Legislature last November. I would be glad to provide my written statement to anyone who is interested.

As I stated in that testimony:

The United States, in filing this action, does not seek to usurp the state's water rights administration system. Rather, we desire only to clear our title in the water rights for the entire Project so that we will know our place in the state's priority system—and can call upon the State Engineer to administer our rights accordingly.

I also can assure you that the United States is not claiming an implied water right for the U.S. Fish and Wildlife Service in this case. The sole purpose of the suit is to protect the water rights for the Project which were obtained by Reclamation in accordance with and under New Mexico law through filings made in New Mexico in 1906 and 1908, and acted upon by New Mexico water officials.

With respect to the ongoing mediation, I wholeheartedly endorse the effort to resolve this suit without litigation. You have my pledge that Reclamation will participate actively and constructively in these negotiations. We do not desire to litigate for litigation's sake. A prompt, negotiated settlement is far preferable.