

Bureau of Reclamation Compels Irrigation District to Execute Non-Negotiable Contract That No Individual Farmer or Rancher Would Sign

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<http://www.capitalpress.com/Opinion/Columns/20160420/bureau-of-reclamation-makes-offer-irrigators-cant-refuse>

Klamath Falls, Oregon – Many may recall how Don Vito Corleone had helped the fading career of singer godson Johnny Fontane to secure a film role he had previously been denied - by making the film studio owner “[an offer he \[couldn't\] refuse.](#)” In much the same way, U.S. Bureau of Reclamation (“BOR”) Mid Pacific Regional Director, David Murillo and Area Manager Therese O’Rourke Bradford are seeking to help the Klamath Irrigation District (“KID” or “District”) to undertake the significant repair of a structurally compromised water flume integral to the [Klamath Irrigation Project](#) (“Project”), which the Bureau recently thrust upon it – by making the District an offer to provide a \$10 million low-interest government loan bearing onerous non-negotiable terms that its Board cannot refuse.

Indeed, this would seem to be a clear case where life imitates art, as the one-sided C Canal Flume financing contract is certainly not an agreement that individual District farmers and ranchers would be inclined to sign had they the choice. [Under veiled threat from the Bureau](#) to reallocate “limited” agency funds needed for the repairs and to suspend water delivery for the 2016 irrigation season, the KID Board of Directors is being compelled to execute what can best be described as a Chicago-mob/Mexican drug cartel-style extortion contract (i.e., a contract where “[the consideration is a promise not to hurt someone who pays up](#)”).

Any objective review of this contract reveals the oppressiveness of its terms and conditions.

Most importantly, [these contract terms](#) depart significantly from the terms of the [1954](#) and 1983 contracts the KID previously executed with the BOR; as a result, they fundamentally change the business relationship between the parties. The C Canal Flume financing contract, for example, does not provide for the same 12-month period within which to cure a late payment or performance “default” as do the earlier contracts. Were a late payment or performance default to occur, the BOR contracting officer would have the absolute discretion to suspend water deliveries to the KID and to reclaim control over Project works previously transferred to the District for operation and maintenance (“O&M”).

In addition, the contract provides the KID with a brief 10-year loan repayment term which the BOR contracting officer, in his/her discretion, may shorten if the District’s annual financials show an ability to prepay the loan, notwithstanding KID protest. Despite the difficulty the District would have in satisfying even a fixed 10-year loan term, the BOR’s ability to unilaterally adjust the contract’s repayment schedule would likely place the KID and its members in substantial financial jeopardy.

If District members suffer several successive bad years of agricultural production and/or lower commodity prices, the combination of a less than 10-year repayment term and the lack of a default cure provision would very likely result in KID contractual default. A default, in turn, would trigger the BOR's suspension of water deliveries to the District and the BOR's take-back of KID Project transferred works. A default under this new contract also would prevent KID irrigators from exercising their 1954 contract right to buy back their portion of the Project from the BOR, leaving them at the mercy of the government for future water deliveries.

Furthermore, beyond imposing this take-it-or-leave-it contract, [the BOR has failed, since 2001](#), to honor repeated KID [requests](#) to provide an annual accounting of the status of the District's 40-year repayment and water service contracts to the U.S. government, as required by Sections 9(d) and 9(e) of the Reclamation Project Act of 1939. By failing to provide the [annual Statements of Project Construction Cost and Repayment \("SPCCR"\)](#) required under the reclamation law, the BOR has intentionally prevented the KID from accurately assessing its Project debt and from accurately budgeting for potential future buy-back of its Project transferred works.

To add insult to injury, BOR Mid-Pacific Region officials and managers have, for many years, freely interfered in and intruded upon daily KID O&M activities, including the planning and design of the C Canal Flume replacement, imposing unnecessary additional financial and other burdens on KID employees and contractors. Local BOR officials have convened selective private meetings with KID employees and independent contractors without first contacting KID management or Board members, despite being instructed to first seek management authorization. Local BOR officials also have diligently worked to shape and manipulate public opinion in their favor to ensure the KID acts consistent with the BOR's policy agenda. These mob/cartel-like behaviors have unsettled KID employment and contractor relationships and harmed the new KID Board's relationship with District members.

It is not difficult to see the BOR's true policy agenda: to convert the Klamath Basin's once highly productive farmlands into nonproductive "[wildlands](#)" in favor of environmental and aboriginal tribal water rights preservation. The most efficient way of achieving this goal is to suspend water deliveries to the basin's farms and ranches through means of [federal-state deception](#), financial extortion, [endangered species act and tribal water rights edicts](#) and [dam removal](#).

It's high time the U.S. Congress involves itself in these matters because they have implications far beyond the Klamath River Basin located in [northern California](#) and [southern Oregon](#). Should the Obama administration successfully curtail and ultimately shut down agricultural production in these valleys, they are certain to do the same elsewhere in the rural West and Midwest. Lower U.S. agricultural production can lead to only one result: higher food prices and/or more imported foods from less regulated third world countries. Now, is that a legacy that Americans wish to leave to their children and grandchildren?

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