

Email Correspondence from D. Murillo to L. Kogan
Re: C Flume Contract
Date: 5/18/16 5:11 pm

[All Bold-faced and Underlined Emphasis Added]

C Flume Contract

Murillo, David [dmurillo@usbr.gov]

Sent: 5:11 pm

To: lkogan@koganlawgroup.com

Cc: Alicia Forsythe, BRIAN PERSON

Mr. Kogan:

Thank you for taking to the time to meet with us on April 21 and explaining the concerns of the Klamath Irrigation District (KID) Board with the C Flume Contract and other KID matters.

1. C Flume Contract

As to Article 5, we understand that KID would like a fixed 30-year repayment period in lieu of the 10-year period currently stated. **We believe this extension can be accomplished within the existing language in Article 5, and can discuss the process in further detail with KID.** Alternatively, if so preferred, KID may re-initiate negotiations for the purpose of developing alternative language for defining the repayment period that would be agreeable to both KID and Reclamation. Any revised contract term would need to be consistent with Federal reclamation law and policy, see <http://www.usbr.gov/recman/pec/pec05-03.pdf> and <http://www.usbr.gov/recman/pec/pec05-03-AppA.pdf>, and the resulting revised contract would also require an additional 60-day public review period. **[NEED TO FIND OUT HOW THIS CAN BE ACCOMPLISHED]**

As to Article 13, we understand KID has concerns with remedies in the case of default by KID. However, **Article 13 is a standard article which requires approval of the Commissioner of Reclamation to modify as suggested by KID. If KID wishes to pursue a change to Article 13, KID will need to submit the suggested language to the Klamath Basin Area Office in order to start the process for requesting a waiver to deviate from PEC 10-04.** If we receive the approval to deviate from PEC 10-04, KID and Reclamation may reinitiate contract negotiations to discuss a change to Article 13 consistent with any approval. As above, **any change in the existing contract would require an additional 60-day public review.**

You also raised concerns with operation of Article 14 of the draft contract. **It is important to note that Article 14, which provides for resumption of operation and maintenance by Reclamation under certain conditions, only applies to the works to be constructed pursuant**

to the proposed C Flume Contract and not to other Project facilities that have been transferred to KID under the 1954 contract. This is evident from Article 14 (a) of the proposed C Flume Contract that identifies the “transferred works” that are at issue in the proposed C Flume Contract as only the “works constructed pursuant to [the C Flume] Contract”. The provisions of the 1954 contract regarding resumption of operation and maintenance by Reclamation will continue to apply to the transferred works, as that term is defined in that contract. **[NEED TO ENSURE CONTRACT RIDER CONTAINS THIS LANGUAGE]**

If KID would like to proceed on these contractual items, KID’s Board of Directors or KID’s duly authorized negotiation team will need to provide a written request to KBAO to reinitiate contract negotiations.

2. Interim Repairs to Remove Restrictions

You also indicated that KID desires to perform additional repairs to the existing C Flume in order to alleviate current operating restrictions. In 2013, following issuance by Reclamation of the Category 1 recommendation, KID proposed and Reclamation agreed to an interim operating plan for the C Flume that includes a water level restriction of 6.65 feet, equating to a flow of approximately 300 cubic feet per second (cfs). The originally designed maximum operating level of the C Flume was 7.17 feet, equating to a flow of approximately 345 cfs, though Reclamation understands that KID historically operated the C Flume to maximum operating level of 7.0 feet, or 330 cfs.

Reclamation will consider a request by KID to perform additional repairs on the C Flume. As before, KID should prepare and submit to Reclamation design drawings and specifications for such repairs. In accordance with Article 7 of the 1954 contract, Reclamation must provide KID with written consent before KID makes any substantial change to the C Flume or other transferred works.

Please note however that Reclamation’s consent, if given, to any additional repairs is by no means an assurance that the structure can be operated safely, either now or with additional repairs. Article 25 of the 1954 contract obligates KID to indemnify Reclamation for any and all claims for damages resulting out of KID’s O&M of the transferred works, including the C Flume. Accordingly, as stated in Reclamation’s letter to KID dated July 17, 2013, “continued operation and use of the C Flume will be at KID’s sole risk and KID will be considered solely liable in the event of failure of the flume or other problems”. The risk for KID associated with operating the C Flume, especially at potentially higher water levels, is one that KID should weigh seriously.

3. Final Decision on Non-reimbursable Funding

As we discussed at the meeting, a decision on KID’s potential eligibility for non-reimbursable **funding under Public Law 111-11 must be made by the Commissioner, in consultation with Reclamation’s Denver office.** The Mid-Pacific Region currently does not have delegated

authority to negotiate a contract including or providing for non-reimbursable funding. **We will, however, attempt to get a final decision on this issue as soon as possible.**

4. Status of Klamath Project Construction and Operation and Maintenance Costs

You also requested that KID be provided with an accounting of Klamath Project construction and operation and maintenance costs. With respect to operation and maintenance costs, the regular quarterly meeting to review **Klamath Project Reserved Works expenses was held Wednesday, April 27, 2016, with KID representatives in attendance. Based on information provided the Area Office, KID is presently current on 2016 Reserved Works O&M charges, and is actually scheduled to receive a refund from the 2015 calendar year costs of \$12,355.** This refund is being processed at the Regional Office and is expected to be completed in the next one to two months.

With respect to Klamath Project construction costs, please note that KID has previously repaid its assigned portion of Project construction charges under the 1954 and prior contracts. It is true that additional Project costs have been incurred, such as the Safety of Dams work on Clear Lake Dam. It is also true that Reclamation is overdue in preparing a Statement of Project Construction Costs and Repayment (SPCCR) for the Klamath Project. However, **the proposed loan repayment contract for the C Flume does not have any connection to or create any obligation with respect to such prior construction costs.** Reclamation and KID would necessarily need to negotiate a separate contract for repayment of such costs.

Recognizing that the SPCCR is an important issue for KID and other Project water users, Reclamation will endeavor to complete a current SPCCR as soon as possible. Area Office and Regional Office staff have already been planning for and are committed to completion of this work.

Please let us know at your earliest convenience if KID wishes to reopen negotiations of the C Flume Contract. I thought it would be better for me to provide our thoughts first and then schedule a meeting as needed. Its my understanding that the board approved the award of the construction contract therefore resolutions to these items will be needed soon.

Thanks

David G. Murillo

Bureau Of Reclamation

Mid Pacific Regional Director

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