

Robert S. Lynch & Associates
Attorneys at Law

Robert S. Lynch *
Relations Associates **
Paul M. Li
Hon. Jim Hartdegen

340 E. Palm Lane

Government

Suite 140

Phoenix, Arizona 85004-4551

Hon. Joe Lane

Office: (602) 254-5908

Facsimile: (602) 257-9542

Email: rslynch@rslynchaty.com

* Admitted to practice in Arizona and
** not members of the bar
the District of Columbia

E-MAILED AND MAILED

April 14, 2004

Jean Gray
Assistant Regional Manager for Power Marketing
Desert Southwest Customer Service Region
Western Area Power Administration
P.O. Box 6457
Phoenix, Arizona 85005-6457

Re: Comments on Western's proposed Section 12 language
for the prototype Amendment No. 1 for the Parker-
Davis Project (Parker-Davis) Electric Service
Contract Extension (Amendment)

Dear Jean:

In your memorandum of March 31, 2004 forwarding the new prototype language for Section 12 and in your previous e-mail on February 20, 2004, you indicated that the subject of this Amendment would have Western-wide impact. As a result, you needed to coordinate and collaborate with other Power Marketing Managers in the other Western Regions and with the Corporate Services Office. In your most recent memorandum, you indicated that that internal coordination process had been accomplished and you were forwarding the result of that effort for our comment.

We believe that the comments that you will be receiving on this proposed new language should also be circulated to the Power Marketing Managers in the other Regions and the Corporate Services Office. If this provision is intended to be utilized Western-wide, we believe that the suggestions we are making concerning ways to improve the mechanisms in the language, as well as our previous

comments, should be considered by your counterparts in the other Regions before any final decision on this language is made by Western.

We would also like to have the opportunity to sit down with you and go over the prototype language and our suggestions about it in an informal discussion that will better inform us as to the intent

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of some of the new language and new provisions that you forwarded to us with your March 31, 2004 memorandum.

We realize that continuing to work on this section delays the ability of Western to offer contract amendments to existing contractors. However, we do not believe that a substantial delay in completing this process will result. Moreover, this provision will have significant consequences for contracts for other Western resources which many of your Parker-Davis customers hold and about which many of your other customer groups may have some interest and concern.

Our concern is heightened by the fact that this new proposal contains four mechanisms while both Western's January 16th proposal and the counterproposal submitted by many of your customers in mid-February were directed at wordsmithing a single provision which is now the second subsection of the March 31, 2004 Western version.

With that in mind, below you will find both questions regarding the four subsections in this proposal as well as suggested amendments to the language of each of them. I think you will see from the questions the areas where we do not understand why a provision or an omission has been created. Our suggestions are directed toward those items.

The first question has to be: What is the relationship between this new Section 12 and Section 37 of existing General Power Contract Provisions (GPCP)? Is it Western's view that Section 37 only applies to matters related to the proposed Subsection 12.2? In that instance, the "notwithstanding" language at the beginning of that subsection would nullify Section 37 where inconsistent. Is that how Western intends this to work?

Subsection 12. 1

Here Western has created a new provision that allows it to "terminate the contract or take other appropriate action if actions taken by the Contractor have abrogated the Contractor's status as a preference entity".

Is this provision intended to apply to your existing contractors now? Is it retroactive? We ask because Western has added a

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baseline in Subsection 12.2 but not here. Is there some reason not to have a baseline in this subsection? Is there some reason it shouldn't be the beginning of the contract extension on October 1, 2008? Is there something happening with regard to some Parker-Davis contractor that might cause this provision to be invoked?

As we understand the current status of Reclamation law, the requirement to be a preference entity is a requirement at the date a contract is executed. If the entity ceases to be a preference entity during the term of the contract, the contract nevertheless is valid until it terminates by its own terms or otherwise. We read Subsection 12.1 to add the requirement that preference status be maintained during the entire life of the contract. Is that Western's intent? Is there some reason why this provision is being added beyond the requirements of Reclamation law?

What actions might a contractor take to have the effect of "abrogating" its status as a preference entity? Since doing so constitutes a legal change in status under Reclamation law, why is this provision subject to the Administrator's determination "in his or her sole judgment"? Wouldn't a court of law make this legal determination independent of any made by the Administrator because there is law to apply in Section 9(c) of the Reclamation Project Act of 1939?

Subsection 12.2

In the third line, you have removed the word "reasonably" which you inserted in the January 16th draft. Does Western believe that removing that word shields Western from a reasonableness standard of review in a court of law if it were to seek to invoke this subsection? If not, shouldn't the word be reinserted?

Western has inserted a baseline in this subsection, being the date of execution of the Amendment. Since existing Section 37 already requires advance notice and approval of any of the items listed in this subsection, why isn't the baseline October 1, 2008?

In Subsection 12.1, the focus is on actions taken by the contractor. In Subsection 12.2, the examples given are all related to actions taken by the contractor. Wouldn't it make sense to include a phrase like "by reason of action by the

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Contractor," on line 5 of Subsection 12.2?

In Western's January 16th version of what is now this subsection, there was an impact test. Since the example or examples of where problems might occur have all related to having an impact on customers by redirecting federal hydropower away from some of them, shouldn't an impact test be included here? A mere change in the status of a contractor's relationship with other entities may not alter the contractor's obligation to serve customer loads or to supply electricity to one or more load serving entities. Isn't the federal interest in this situation the continued "wide-spread use" of the resource? And not just in possible arrangements that Western customers might make with each other to enhance service to customers?

In the examples given in the paragraph, the word "organization" and the word "entity" are variously used and even intermixed. Are these words intended to have different meanings? If they are not, is there any particular reason not to pick one or the other of them for sake of consistency?

Subsection 12.3

We note that it would be impossible to give 90-days advance notice for any changes described in Subsection 12.1 because it relates to an after-the-fact determination by Western of the legal impact of some action taken by a contractor. As such, Subsection 12.1 stands alone outside the concept of the current Section 37 of the GPCP as well as that of Subsection 12.2. Advance notice of items contained in Subsection 12.2 is obviously something that can be done. In the interest of avoiding problems, we believe that the notice provision should be expanded. Customers proposing to do something that might be deemed a change in "status" will want to head problems off at the pass. For that reason, we would suggest adding the following sentence to Subsection 12.3:

"The Contractor may give Western such notice prior to implementing any other change in order to seek Western's review and opinion as to whether Western deems such change a "change in status" pursuant to Subsection 12.2."

Subsection 12.4

If the contractor is to have a 90-day notice requirement, we think

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it is perfectly appropriate for the Administrator to agree to a response timeframe to that notice whether the Administrator intends to take any action or not. Otherwise, the contractor will not know if there is a problem. Obviously, the contractor cannot merely hang around for some unspecified period of time wondering whether the Administrator will invoke Subsection 12.4. For that reason, we believe a sentence should be inserted at the beginning of Subsection 12.4 as follows:

"The Administrator will respond in writing to a notice provided pursuant to Subsection 12.3 within forty-five (45) days of receipt of such notice, indicating whether or not the Administrator intends to take action pursuant to Subsections 12.1 or 12.2 of the Contractor implements the proposed change."

We would then alter what would now be the second sentence to read as follows:

"If the Administrator determines to take action because the Contractor's status will change or has changed in a manner addressed in Subsections 12.1 or 12.2, Western will notify the Contractor in writing of the Administrator's intended action and the reasons therefore prior to implementation of such action."

We believe that Subsections 12.1 and 12.2 address different problems and thus should be viewed in the alternative. Subsection 12.1 is directed at preference entity status. Subsection 12.2 is directed at actions potentially having retail customer impact. We also think that it is unstated but should be stated that the Western notice will be in writing and will contain the reasons for the intended action as well as notice of the action. We believe that it is implied that such notice will have that explanation because, without it, requests for reconsideration would be difficult if not impossible to make.

Subsection 12.5

We would like to propose a new subsection to remove ambiguities of time requirements and methods for giving notice as follows:

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"Written notice may be accomplished by mail, facsimile or e-mail. The postmark of mailed notice or the date of receipt of facsimile or e-mail shall govern timeframes provided for in this Section."

We believe that this provision will remove any ambiguities about the workings of this section and avoid problems associated with notice provisions where this sort of detail is omitted.

As you can see from the length and detail of these comments, we've make a good faith effort to examine the new proposal, attempt to understand it, explain to you the questions that it raises to us, and provide language that we believe can make this provision workable and understandable to all. As representatives of public bodies, we will have to be in a position to explain this provision to the governing boards of these bodies. While many of them may already have been briefed on the prior language suggestions, this new expanded provision is nothing they or we have seen before.

Once you have had a chance to review these comments and share them with your colleagues in your prior collaboration on this proposal, we would hope to have an informal meeting with you as soon thereafter as it can be conveniently scheduled in order to go over these thoughts and see if we can find closure on this subject. We look forward to hearing from you in that regard.

Sincerely,
ROBERT S. LYNCH &

ASSOCIATES

/s/

Robert S. Lynch

RSL:psr

cc: Mike Hacskaylo, Administrator
Tyler Carlson, Regional Manager
IEDA Presidents/Chairmen and Managers
Robert Walker, City of Needles
George M. Caan, Colorado River Commission of Nevada
Frank Barbera, Imperial Irrigation District
Orlando B. Foote, Esq.
Glenn O. Steiger, P.E., General Manager, IID Energy
Charles Reinhold, Electric Resource Strategies