

Appendix A

Draft Long-term Miscellaneous Purposes Contract



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CARLSBAD PROJECT
NEW MEXICO

CONTRACT

Between the

CARLSBAD IRRIGATION DISTRICT
NEW MEXICO

and the

UNITED STATES OF AMERICA,

FOR THE CONVERSION OF CARLSBAD PROJECT WATER
FROM IRRIGATION TO MISCELLANEOUS PURPOSES
AND USES OTHER THAN IRRIGATION

WITNESSETH:

This Contract No. 06-WC-40-650 (Contract), made this _____ day of _____, 2006, between the UNITED STATES OF AMERICA, hereinafter called “United States,” acting through the Secretary of the Interior, hereinafter called “the Secretary,” and the CARLSBAD IRRIGATION DISTRICT, a quasi-municipal organization formed and existing under the laws of the State of New Mexico, hereinafter interchangeably referred to as “CID or Contractor,” pursuant to the Act of June 17, 1902 (32 Stat. 388) and all acts amendatory thereof or supplementary thereto, particularly the Act of February 25, 1920 (41 Stat. 451), collectively known as the Federal Reclamation laws.

RECITALS:

WHEREAS, pursuant to the authorization by the Secretary on November 28, 1905, for the original Carlsbad Project, hereinafter called “Project,” the United States purchased and appropriated certain Project water rights and constructed certain Project features to store water in New Mexico for irrigation of Project lands in New Mexico, and certain of those original Project

1 water rights are stored pursuant to Federal Reclamation law and Section 7 of the Flood Control
2 Act of August 11, 1939, authorizing Sumner Dam and Sumner Lake to be utilized for irrigation,
3 flood control, river regulation, and other beneficial uses, and existing contracts with CID provide
4 for operation and maintenance of certain Project features in order to store and deliver Project
5 water;

6
7 WHEREAS, additional Project features and authorizations have been confirmed from
8 time to time;

9
10 WHEREAS, Project water is stored in and released for CID from Sumner Lake, Santa
11 Rosa Lake, Avalon Reservoir and Brantley Reservoir, which operate in accordance with the
12 terms of contracts between the United States and CID pursuant to the Federal Reclamation laws,
13 and such stored Project water is the primary source of water for the Project area;

14
15 WHEREAS, the Act of February 25, 1920, authorizes the Secretary to enter into contracts
16 to supply water from any project irrigation system for purposes other than irrigation, upon such
17 conditions of delivery, use and payment as the Secretary may deem proper; provided such
18 contracts shall be approved by the water users' association; provided there is no other practicable
19 water supply for the purpose; provided that the delivery of such water shall not be detrimental to
20 water service for irrigation; and provided that Federal revenues derived from such contracts shall
21 be covered into the Reclamation fund and placed as a credit to the Project from which the water
22 is supplied;

23
24 WHEREAS, the Pecos River is an interstate stream;

25
26 WHEREAS, the United States Supreme Court has enjoined the State of New Mexico to
27 comply with Article III (a) of the Pecos River Compact by delivering water at the New Mexico-

1 Texas state line as prescribed in the Amended Decree entered in Texas v. New Mexico, 485 U.S.
2 288 (1988);

3
4 WHEREAS, CID currently supplies Project water as ordered by owners of irrigable lands
5 within CID boundaries, some of whom are willing to temporarily forego the use of their
6 entitlement of Project water, by forbearing to irrigate, and lease such water (Leased Forbearance
7 Water) to the State of New Mexico Interstate Stream Commission (NMISC) for use by NMISC
8 for other than irrigation purposes;

9
10 WHEREAS, it sometimes happens that at the end of any one calendar year there remains
11 available to lease to NMISC allotted Project water (Undelivered Allotment Water) that has not
12 been called for by the water user to whom it has been allotted;

13
14 WHEREAS, a Settlement Agreement dated March 25, 2003 (Settlement Agreement),
15 between the State of New Mexico *ex rel.* the State Engineer; the New Mexico Interstate Stream
16 Commission; the United States of America, Department of the Interior, Bureau of Reclamation;
17 the Carlsbad Irrigation District; and the Pecos Valley Artesian Conservancy District provides
18 that the NMISC may purchase up to 6,000 acres of land on the assessment roles of CID, which
19 are entitled to delivery of Project water;

20
21 WHEREAS, NMISC owns irrigable land within CID boundaries, and wishes to use its
22 entitlement of Project water appurtenant thereto for delivery to the New Mexico-Texas state line
23 in satisfaction of the Amended Decree;

24
25 WHEREAS, NMISC wishes to enter into agreements with CID to lease Undelivered
26 Allotment Water and Leased Forbearance Water for delivery to the New Mexico-Texas state line
27 in satisfaction of the Amended Decree;

1 WHEREAS, execution of this Contract will meet the United States' commitment under
2 the Settlement Agreement, and is a critical and necessary component for the State to meet its
3 Compact obligations and the Amended Decree;

4
5 WHEREAS, Contract No. 9-WC-40-R6140 (Interim Contract), dated February 9, 1999,
6 between the United States and CID provides for the use of Project water for other than irrigation
7 purposes by NMISC;

8
9 WHEREAS, the Interim Contract expires February 9, 2009, and the parties hereto desire,
10 in keeping with the terms of the Settlement Agreement, to enter into a long-term agreement
11 whereby NMISC may continue to use Project water appurtenant to lands it owns within CID,
12 Leased Forbearance Water, and Undelivered Allotment Water, for other than irrigation purposes
13 for an extended period of time;

14
15 NOW THEREFORE, the parties agree as follows:

16
17 AGREEMENT:

18
19 1. Contracting Authority

20
21 This Contract is executed under the authority of the Act of June 17, 1902 (32 Stat. 388),
22 and all acts amendatory thereof or supplementary thereto, particularly the Act of February 25,
23 1920 (41 Stat. 451). This Contract establishes the terms and conditions for the use of Project
24 water for miscellaneous purposes other than irrigation. All Project water hereafter used for
25 miscellaneous purposes other than irrigation shall be subject to the conditions set forth below.

26 2. Use of Project Water

27
28 A. During the term of this Contract, CID may enter into an agreement or a series of
29 agreements with NMISC (Third Party Agreements) for Leased Forbearance Water. Such Project
30 water must be appurtenant to lands for which the landowners are willing to forbear the use of
31 Project water for irrigation purposes so that the water may be leased to NMISC, as a third party,

1 for miscellaneous purposes other than irrigation. All such agreements must be approved by

2 Reclamation.

3
4 B. During the term of this Contract, CID may enter into Third Party Agreements
5 with NMISC to deliver Project water appurtenant to lands owned by NMISC for miscellaneous
6 purposes other than irrigation of such lands. All such agreements must be approved by
7 Reclamation. Any such agreement may be for a term up to forty (40) years.

8
9 C. During the term of this Contract, CID may enter into Third Party Agreements
10 with NMISC for Undelivered Allotment Water for miscellaneous purposes. All such agreements
11 must be approved by Reclamation.

12
13 D. No Project water deliveries under this Contract or any Third Party Agreement
14 shall be made in such a manner as to be detrimental to Project water service for Project
15 irrigation.

16
17 E. No Third Party Agreement shall extend beyond the term of this Contract.

18
19 F. The maximum quantity of water to be made available to NMISC pursuant to this
20 Contract is 50,000 acre-feet annually.

21
22 G. CID shall be responsible for water deliveries to NMISC pursuant to this Contract,
23 and any additional costs incurred as a result of those deliveries.

24 3. Price of Project Water and Components Thereof

25
26 The Third-Party Agreement(s) for the lease and/or delivery of Project water to NMISC
27 for miscellaneous purposes shall reflect the following price conditions:

28

1 A. The price of Leased Forbearance Water and Undelivered Allotment Water shall
2 be the sum of CID's Portion, the Forbearance Payments, and the Federal Revenue component as
3 described below:

4 (1) CID's Portion consists of an amount sufficient to cover CID's
5 administrative and operation costs associated with the delivery of water pursuant to this Contract.
6 CID's Portion shall not constitute Federal Revenues.

7 (2) Forbearance Payments are payments to landowners as incentive to forego
8 delivery of Project water to which they are entitled under Reclamation Law or Reclamation
9 contracts. NMISC shall provide CID with funds to cover the Forbearance Payments. CID shall
10 secure Project water from the landowners and distribute Forbearance Payments to landowners.
11 Forbearance Payments shall not constitute Federal Revenues.

12 (3) Federal Revenues are calculated in addition to CID's Portion and
13 Forbearance Payments. NMISC shall pay an amount equal to two and one-half percent (2-1/2%)
14 of the sum of CID's Portion as set out in subparagraph (1) above and Forbearance Payments as
15 set out in subparagraph (2) above for every acre-foot of Leased Forbearance Water and
16 Undelivered Allotment Water leased pursuant to Third-Party Agreements under the terms of this
17 Contract. Such Third-Party Agreements shall provide that Federal Revenues shall be paid to
18 CID, which shall remit the Federal Revenues to the United States within Sixty (60) days after
19 receipt.

20 B. The price of Project water appurtenant to lands owned by NMISC and delivered
21 to NMISC for other than irrigation purposes shall be CID's Portion as described in subarticle
22 3.A.(1) above. No Federal Revenues shall be collected or Forbearance Payments made for water
23 used for miscellaneous purposes by NMISC which is appurtenant to lands owned by NMISC.
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1 C. The price of Project water appurtenant to lands owned by NMISC and delivered
2 to NMISC for irrigation purposes on those lands shall be the same as for any other landowner
3 within CID.

4 D. Federal Revenue shall be covered into the Reclamation Fund for the credit of the
5 Project.

6 4. Third-Party Agreement(s)
7

8 Any Third-Party Agreement entered into between CID and NMISC for Project water,
9 pursuant to this Contract, shall be subject to written approval of the Secretary.

10
11 5. Environmental Compliance
12

13 Reclamation and the NMISC are joint lead agencies in developing an Environmental
14 Impact Statement for this Contract. Appropriate Section 7 consultation under the Endangered
15 Species Act will also be completed. Public participation requirements will be satisfied through
16 public scoping meetings held as part of the EIS process. All costs for environmental compliance
17 activities relating to this Contract shall be funded by NMISC.

18 6. Term of Contract
19

20 This Contract shall become effective upon execution and shall remain in effect for forty
21 (40) years from the date hereof. No Third-Party Agreement or series of such agreements entered
22 into between CID and NMISC shall exceed the remaining term of this Contract.

23 7. Pending Litigation Unaffected by This Contract
24

25 Neither party waives any right, claim, remedy, or defense now or hereafter asserted in the
26 civil action styled State of New Mexico v. L.T. Lewis, et al., Chaves County Cause Nos. 20294
27 and 22600, Consolidated Carlsbad Basin Section, Carlsbad Irrigation District.

1 8. This Contract Shall Govern

2
3 In the event of any conflict between the terms of the November 14, 1932, Repayment
4 Contract No. ILR-717, as amended, executed by the United States and CID, and this Contract,
5 this Contract shall control.

6 9. Federal Operation and Maintenance Costs

7
8 Nothing in the implementation of the Third-Party Agreement(s) shall increase the Federal
9 costs for Project operation and maintenance, as under the terms of Contract No. 9-07-40-R0910
10 dated October 2, 1989.

11 10. Confirmation of Contract

12
13 The Contractor, after the execution of this Contract, shall furnish to the Contracting
14 Officer evidence that pursuant to the laws of the State of New Mexico, the Contractor is a legally
15 constituted entity and the Contract is lawful, valid, and binding on the Contractor. This Contract
16 shall not be binding on the United States until such evidence has been provided to the
17 Contracting Officer's satisfaction.

18
19 11. Notices

20
21 Any notice, demand, or request authorized or required by this Contract shall be deemed
22 to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to
23 the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 S. State Street,
24 Room 6107, Salt Lake City, Utah 84138-1102, and on behalf of the United States, when mailed,
25 postage prepaid, or delivered to the Carlsbad Irrigation District, 201 S. Canal, Carlsbad NM
26 88220. The designation of the addressee or the address may be changed by notice given in the
27 same manner as provided in this article for other notices.

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29 12. Officials Not to Benefit

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31 No Member of or Delegate to the Congress, Resident Commissioner, or official of the
32 Contractor shall benefit from this Contract other than as a water user or landowner in the same
33 manner as other water users or landowners.

34
35 13. Changes in Contractor's Organization

36
37 While this Contract is in effect, no change may be made in the Contractor's organization,
38 by inclusion or exclusion of lands or by any other changes which may affect the respective
39 rights, obligations, privileges, and duties of either the United States or the Contractor under this
40 Contract, including, but not limited to, dissolution, consolidation, or merger, except upon the
41 Contracting Officer's written consent.

1 14. Assignment Limited—Successors and Assigns Obligated

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3 The provisions of this Contract shall apply to and bind the successors and assigns of the
4 parties hereto, but no assignment or transfer of this Contract or any right or interest therein by
5 either party shall be valid until approved in writing by the other party.
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7 15. Books, Records, and Reports

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9 The Contractor shall establish and maintain accounts and other books and records
10 pertaining to administration of the terms and conditions of this Contract, including the
11 Contractor’s land-use (crop census) land-ownership, land-leasing, and water-use data; and other
12 matters that the Contracting Officer may require. Reports shall be furnished to the Contracting
13 Officer in such form and on such date or dates as the Contracting Officer may require. Subject
14 to applicable Federal laws and regulations, each party to this Contract shall have the right during
15 office hours to examine and make copies of the other party’s books and records relating to
16 matters covered by this Contract.
17

18 16. Rules, Regulations, and Determinations

19
20 A. The parties agree that the delivery of water or the use of Federal facilities
21 pursuant to this Contract is subject to Federal reclamation law, as amended and supplemented,
22 and the rules and regulations promulgated by the Secretary of the Interior under Federal
23 reclamation law.
24

25 B. The Contracting Officer shall have the right to make determinations necessary to
26 administer this Contract that are consistent with the expressed and implied provisions of this
27 Contract, the laws of the United States and the State, and the rules and regulations promulgated
28 by the Secretary of the Interior. Such determinations shall be made in consultation with the
29 Contractor.
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31 17. Administration of Federal Project Lands

32
33 A. The lands and interests in lands acquired, withdrawn, or reserved and needed by
34 the United States for the purposes of care, operation, and maintenance of Federal project works
35 may be used by the Contractor for such purposes. The Contractor shall ensure that no
36 unauthorized encroachment occurs on these Federal project lands and rights-of-way. The
37 Contractor does not have the authority to issue any land-use agreement or grant that conveys an
38 interest in Federal real property, nor to lease or dispose of any interest of the United States.
39

40 B. The Contractor may, subject to the written approval of the Contracting Officer,
41 issue permits, licenses, or similar land use documents only to the extent they do not grant an
42 interest in Federal real property.
43

44 18. Protection of Water and Air Quality

45
46 A. Project facilities used to make available and deliver water to the Contractor shall
47 be operated and maintained in the most practical manner to maintain the quality of the water at
48 the highest level possible as determined by the Contracting Officer: Provided, That the United
49 States does not warrant the quality of the water delivered to the Contractor and is under no

obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

B. The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States and of the State of New Mexico, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or Project water provided by the Contractor within the Contractor’s Project water service area.

C. This article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

19. Compliance with Civil Rights Laws and Regulations

The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973.

IN WITNESS WHEREOF, the parties hereto have caused this Contract No. _____ to be duly executed on the day and year first written above.

Approved:

UNITED STATES OF AMERICA

Regional Solicitor

Regional Director
Upper Colorado Region
Bureau of Reclamation

ATTEST:

CARLSBAD IRRIGATION DISTRICT

Manager-Secretary

President, Board of Directors