

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

ANIMAS-LA PLATA PROJECT  
COLORADO RIVER STORAGE PROJECT

REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND  
LA PLATA CONSERVANCY DISTRICT, NEW MEXICO

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Contract No. \_\_\_\_\_

UNITED STATES  
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ANIMAS-LA PLATA PROJECT  
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REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND LA PLATA  
CONSERVANCY DISTRICT, NEW MEXICO

THIS ~~REPAYMENT~~~~AMENDATORY~~ CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_, 2008, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Federal Reclamation Laws, between the UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by the officer executing this contract, and LA PLATA CONSERVANCY DISTRICT, hereinafter called the Conservancy, located in San Juan County, New Mexico, a conservancy district duly incorporated and existing pursuant to the Decree Incorporating La Plata Conservancy District, dated August 5, 1946 ("Decree"), by the District Court in San Juan County, and the laws of San Juan County and the State of New Mexico, acting through their representatives.

WITNESSETH, That:

WHEREAS, the following statements are made in explanation:

(a) The Act of Congress approved April 11, 1956 (70 Stat. 105), authorized the planning and investigation of the Animas-La Plata Project as a participating project of the Colorado River Storage Project; subsequently, the construction, operation, and maintenance of the Animas-La Plata Project was authorized by Title V of the Colorado

*October 20, 2008 Draft*

River Basin Project Act of September 30, 1968 (82 Stat. 896), and the United States has investigated, planned, and begun to construct said Animas-La Plata Project for the storage, diversion, salvage, and distribution of the waters of the Animas River, which Project has among its authorized purposes the furnishing of water for municipal, industrial, domestic, and other beneficial purposes. The water rights settlement purposes of the Project were authorized by the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585) as amended by the Colorado Ute Settlement Act Amendments of 2000, Public Law 106-554 (hereafter referred to as the Settlement Act, as amended).

(b) The Settlement Act, as amended, authorizes the construction of a reservoir, pumping plant, inlet conduit, and appurtenant facilities with sufficient capacity to divert and store water from the Animas River for an average annual depletion of 57,100 acre feet of water to be used for a municipal and industrial water supply;

(c) Reclamation has completed the Animas-La Plata Final Supplemental Environmental Impact Statement (FSEIS) dated July 2000 and subsequent Record of Decision dated September 25, 2000, for compliance with the National Environmental Policy Act. The Conservancy acknowledges that as a result of this regulatory compliance, it is limited in the Contract to an annual average depletion of 780 acre-feet of water for this Project.

(d) As provided by Public Law 100-585, the design and construction functions of the Bureau of Reclamation with respect to the Animas-La Plata Project shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (Public

Law 93-638) to the same extent as if such functions were performed by the Bureau of Indian Affairs.

(e) The Conservancy has demonstrated its legal and financial capability to make the contributions and payments required by this document, by demonstrating that it is a legal entity under state law, and that it has taxing authority either on its own or in conjunction with others.

(f) The Conservancy intends to subcontract with the San Juan Water Commission and others to provide water from its Statutory Water Supply.

(g) The project will be used to provide dependable long-term water storage for the Conservancy as described in the July 2000 Final Supplemental Environmental Impact Statement and the September 25, 2000, Record of Decision.

(h) The construction of the Project Works, the allocation of the water supply from those facilities to the Colorado Ute Tribes, the provision of funds to the Colorado Ute Tribes and the issuance of an amended final consent decree by the State of Colorado as contemplated in the Settlement Act, as amended, shall constitute final settlement of the tribal claims to water rights on the Animas and La Plata Rivers in the State of Colorado.

~~(i) The June 30, 1986 Cost Sharing Agreement was amended by all parties to that agreement in 2001 in order to make that agreement consistent with the Settlement Act, as amended. [Ex. A. to Power Auth. K with BOR]~~

~~(j) Construction of the Projects Works is approximately \_\_\_\_\_ percent complete [as of \_\_\_\_\_ date].~~

(i) The Conservancy desires to contract with the United States for a municipal and industrial water supply pursuant to the terms and conditions of the Settlement Act, as

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amended, and to pay its capital obligation through a partial up-front payment and/or through a long-term repayment contract for its proportional share of those Project Works necessary to store, deliver, and use its water from the Project and for the right to the storage and use of such water in New Mexico.

(j) In May of 2001, Reclamation prepared an Interim Cost Allocation, based on October 2001 price levels of the estimated Project construction costs, which established the repayment obligation of the Conservancy as \$4,902,397 at that time. This Interim Cost Allocation continues to be updated annually to reflect the impacts of inflation on Project construction costs as described in Article 8 herein.

(k) It is the intent of both the United States and the Conservancy that any rights granted by this Agreement are not limited to a specific term but would instead continue in full force and effect pursuant to section 9 of the Reclamation Project Act of 1939, 43 U.S.C. § 485h, and this Agreement will remain in full force and effect as provided in subarticle 8(l) below.

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, the parties hereto agree as follows:

1. GENERAL DEFINITIONS

Where used in this contract:

(a) "United States" or "Contracting Officer" or either of them means the Secretary of the United States Department of the Interior or his/her duly authorized representative.

(b) "Conservancy" means the La Plata Conservancy District, San Juan County, New Mexico, created by the Decree Incorporating La Plata Conservancy District, dated August 5, 1946.

(c) "Project" means the Animas-La Plata Project, a participating project of the Colorado River Storage Project, authorized by Title V of the Colorado River Basin Project Act, approved September 30, 1968, as modified by the Settlement Act, as amended.

(d) "Project Operator" means the entity operating the Project Works.

(e) "Project Works" means all works or facilities as described in the Settlement Act, as amended, to be constructed under the Project, including a reservoir, a pumping plant, a reservoir inlet conduit, and appurtenant facilities with sufficient capacity to divert and store water from the Animas River for an average annual depletion of 57,100 acre-feet of water to be used for a municipal and industrial water supply, together with lands and rights-of-way for such works, as described in Article 2 herein.

(f) "Statutory Water Allocation" means the municipal and industrial (M&I) water allocation delivered to the Conservancy through the use of the project components, pursuant to Sec. 6(a)(1)(ii)(VII) of the Settlement Act, as amended.

(g) "Project Water" means all water provided through the Animas-La Plata Project.

~~(h) "Cost Sharing Agreement" refers to the "Agreement in Principle Concerning the Colorado-Ute Indian Water Rights Settlement and Binding Agreement for Animas-La Plata Project Cost Sharing" dated June 30, 1986, between the United States, the State of Colorado, the New Mexico Interstate Stream Commission, certain political~~

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~~subdivisions of the States of Colorado and New Mexico, the Ute Mountain Ute Tribe, and the Southern Ute Indian Tribe, as amended, in 2001.~~

(h) "Water Rights Settlement Agreement" refers to the "Colorado Ute Indian Water Rights Final Settlement Agreement" dated December 10, 1986 among the United States, the State of Colorado, the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, and the additional governmental and private entities in Colorado signatory thereto, as implemented by the Settlement Act, as amended.

(i) "Consultation" means the United States shall notify and confer with the Conservancy regarding significant decisions pertaining to this contract. In the event that consensus cannot be reached and the United States makes a decision, appeals are available to the extent allowed under applicable laws.

(j) "San Juan River System" means the San Juan River and its tributaries.

(k) "Operation and Maintenance Facilities" means those facilities necessary to support operations and maintenance work, for example operation and maintenance headquarters, office space, shop for repair of equipment, storage place for supplies, and equipment yard.

(l) "Estimated Repayment Obligation" means the reimbursable construction costs allocated to the Conservancy's M&I uses associated with the construction of Project Works plus any appropriate Interest During Construction (IDC) of approximately \$4,902,397 \$6.5 million plus additional payments to escrow, if any.

(m) "The Final Repayment Obligation" means the final reimbursable construction costs allocated to the Conservancy's M&I uses associated with the construction of Project Works, plus any appropriate IDC greater than \$4,902,397 \$6.5



~~million plus additional payments to escrow, if any, as that are~~ determined through the Final Cost Allocation described in ~~SubarticleSection~~ 8(d) below.

(n) “Remaining Repayment Obligation” means the difference, if any, between the Estimated Repayment Obligation and the Final Repayment Obligation as determined through the Final Cost Allocation described in Subarticle 8(d) below.

(o) “Intergovernmental Agreement” means that draft agreement, dated June 2, 2008, which has been negotiated-executed by Project beneficiaries, and if/when finalized, will on \_\_\_\_\_, 2008, through which the beneficiary createies created an association to operate and maintain the Project after construction is completed. ~~—The Intergovernmental Agreement does not affect the terms of this Agreement between the Conservancy and the United States because it is not an agreement signed by the United States that reallocated Project benefits or storage, but rather is an agreement among Project beneficiaries themselves about how to operate the Project and utilize the benefits of the Project that each beneficiary has been allocated.~~

## 2. PROJECT WORKS

Subject to the terms and conditions of this and other applicable contracts related to this Project, the United States will construct the following Project Works and appurtenant facilities, acquire lands, and provide certain moveable property and equipment to the Project Operator needed for Project operation and maintenance as, in the opinion of the United States in consultation with the Project Operations Committee, are necessary for Project purposes, without being limited by enumeration and within the limit of funds made available by the Congress and the contracting parties.

(a) The Project Works are presently identified as the following:

(1) Ridges Basin Dam and Lake Nighthorse and appurtenant facilities, the main storage facility for the Project, are located on Basin Creek in Ridges Basin approximately 3 miles southwest of Durango, Colorado. The reservoir will have a capacity of approximately 120,000 acre-feet.

(2) Durango Pumping Plant and appurtenant facilities are located adjacent to the Animas River and will pump water from the Animas River for storage in Lake Nighthorse.

(3) Ridges Basin Inlet Conduit and appurtenant facilities extend from the Durango Pumping Plant to Lake Nighthorse.

(4) Operation and Maintenance Facilities will be constructed as determined necessary by the United States, after consultation with the Project Construction Coordinating Committee, for the required operation and maintenance of Project Works.

(b) The United States, after consultation with the Conservancy, shall have the right at any time to increase the capacity of the Project Works or any unit or feature thereof for other than currently authorized project purposes without additional capital or operation and maintenance cost to the Conservancy; Provided, that the Conservancy's use of the Statutory Water Allocation shall not be impaired thereby. The right of use of such increased capacity is reserved to the United States.

(c) Any additions, changes to, or operation of Project Works or changes in use of the water allocations pursuant to Sec. 6(a)(1)(A)(ii) of the Settlement Act, as amended, from that stated in the Animas-La Plata Final Supplemental Environmental Impact Statement (FSEIS) dated July 2000 and subsequent Record of Decision dated September

25, 2000, will be subject to further compliance with applicable environmental statutes, which shall include an analysis of potential impacts on other project participants.

(d) Construction and operation of the Project will be in accordance with the Environmental Commitments in Chapters 4 and 5 of the FSEIS, which are attached as Exhibit A to this contract.

3. CONDITIONS PRECEDENT TO WATER DELIVERY

The United States shall be under no obligation to commence, or having commenced, to continue construction of Project Works and deliver water to the Conservancy until adequate water rights for the Project are confirmed and any conflicts between private water rights and Project water rights are resolved to the satisfaction of the United States.

4. PROJECT COORDINATION COMMITTEES

Coordination of Project construction, operations, and maintenance activities has been, in part, and will be accomplished through the establishment of two committees: one to focus on those activities associated with the construction of the Project Works, the other to oversee the operations and maintenance activities.

(a) The Project Construction Coordination Committee is made up of representatives of those entities that have been identified by the Settlement Act, as amended, to receive a water allocation and the Bureau of Reclamation. This committee has provided and will provide coordination and consultation on the construction activities among all the project beneficiaries, seeking common understanding and consensus on decisions associated with such items as final plans for Project Works, project

construction completion schedule, and Project construction costs. Upon Project completion, this committee will be dissolved.

(b) The Project Operations Committee will initially consist of representatives from those entities that have been identified by the Settlement Act, as amended, to receive a water allocation and the Bureau of Reclamation. Initially, this committee will determine the appropriate entity to contract with Reclamation for the operation and maintenance of the Project Works and the development of a common understanding among the project beneficiaries of the appropriate level of annual operation, maintenance, and replacement (OM&R) activities to be performed on the Project Works to assure the Project's long term operational integrity and public safety. Ultimately, this committee will oversee the ongoing operations, maintenance, and replacement activities of the Project Works, providing consultation and coordination among the committee members on such items as annual OM&R funding, maintenance schedules, and public safety issues. The providing of OM&R may be modified by the Intergovernmental Agreement.

5. MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION OF STATUTORY WATER ALLOCATION

(a) The water released or bypassed to meet the Statutory Water Allocation for the Conservancy pursuant to this contract shall be measured at the outlet works of Ridges Basin Dam, and/or in the Animas River at the Durango Pumping Plant with measuring facilities installed by the United States as a part of the Project. Additional points of diversion directly from Lake Nighthorse may be made in the future with approval of the United States. Measurement of water diverted directly from Lake Nighthorse shall be measured at the point of diversion. Water delivered to the Conservancy's Animas and San Juan River users or subcontractors pursuant to this contract shall be measured by the

users at their points of diversion on the Animas and San Juan Rivers. The Statutory Water Allocation diverted from the San Juan River will be either replaced with Project Water released from Lake Nighthorse or natural river flows bypassed at the Durango Pumping Plant. Sufficient water will be delivered from Project storage or bypassed ~~to be available for diversion at all approved points of diversion on the San Juan River System~~ to ensure that the Conservancy annually receives its Statutory Water Allocation.

(b) Once water is released from the outlet works of Ridges Basin Dam, ~~or~~ bypassed at the Durango Pumping Plant or diverted from Lake Nighthorse, the United States will not be responsible for the control, carriage, handling, use, disposal, or distribution of the Statutory Water Allocation furnished the Conservancy, except when caused by direct action of the United States. The Conservancy will hold the United States harmless on account of damage or claim of damage of any nature whatsoever arising out of or connected with the control, carriage, handling, treatment, use, disposal, or distribution of the Statutory Water Allocation by the Conservancy below the Project points of measurement.

(c) All facilities required for taking the Statutory Water Allocation furnished under this contract from the points of delivery and putting it to use by the Conservancy and its users or subcontractors will be acquired, constructed or installed, and operated and maintained by the Conservancy or its users or subcontractors at their sole expense.

6. ALLOTMENT AND USE OF STATUTORY WATER ALLOCATION

(a) The Conservancy's Statutory Water Allocation consists of a municipal and industrial water allocation with an average annual depletion not to exceed 780 acre-feet, except as otherwise provided under Subarticle 8(h) herein. This allocation may be met by

a combination of direct diversion of the natural flows from the San Juan River System and water released and/or diverted from Project storage.

(b) The Conservancy's Statutory Water Allocation shall be diverted and put to beneficial use under its own permit or the permits of its subcontractors issued by the New Mexico State Engineer.

(c) Except as provided in Subarticle 8(h) herein, the Conservancy shall have the right to 1,560 acre-feet of storage in Lake Nighthorse to supplement the amount of direct flow diversion as necessary to fulfill the Conservancy's Statutory Water Allocation of 780 acre-feet average annual depletion. Any portion of the 1,560 acre-feet of unused storage shall be retained in Lake Nighthorse and shall be available for the Conservancy's use in succeeding years. The Conservancy shall have the opportunity to purchase excess Project water from other Project participants.

(d) Any use of the Statutory Water Allocation other than that contemplated in the July 2000 Final Supplemental Environmental Impact Statement and subsequent Record of Decision dated September 25, 2000 for the Animas-La Plata Project shall be subject to compliance with applicable environmental statutes.

7. WATER RIGHT PROVISIONS

(a) As provided by Section 15 of the Settlement Act, as amended, upon the request of the State Engineer of the State of New Mexico, the Secretary shall, as soon as practicable, in a manner consistent with applicable law, assign, without consideration, to the New Mexico Animas-La Plata Project beneficiaries or to the New Mexico Interstate Stream Conservancy in accordance with the request of the State Engineer, the Department of the Interior's interest in New Mexico State Engineer Permit Number 2883,

dated May 1, 1956, in order to fulfill the New Mexico non-Navajo purposes of the Project, so long as the permit assignment does not affect the application of the Endangered Species Act of 1973 (16 U.S. C. 1531 et seq.) to the use of the water involved. The parties agree that "as soon as practicable" is intended to refer to the time necessary for the Secretary to process the request and that the assignment will not depend on other factors or progress of the Project.

(b) Upon assignment as described in (a) above, the Conservancy shall diligently work to put its water to beneficial use and file proofs of beneficial use under New Mexico State law as may be necessary to develop the water in the permit assigned. The Conservancy will protect its Project water rights and in case a dispute arises as to the character, extent, priority or validity of the rights of the Conservancy to use or permit use of its Statutory Water Allocation, the Conservancy shall promptly bring and diligently prosecute and/or defend judicial proceedings for the determination of such dispute and shall take all other measures necessary toward the defense and protection of the Conservancy's Project water rights.

(c) If requested by the United States and the Conservancy agrees, the Conservancy will assign all or part of such water rights secured under New Mexico Permit No. 2883 to the United States if such assignment is necessary to protect the Statutory Water Allocation.

8. METHOD OF PAYMENT FOR PROJECT CONSTRUCTION COSTS

(a) ~~The Amended and Restated Agreement in Principle Concerning the Colorado-Ute Indian Water Rights Settlement and Binding Agreement for Animas-La Plata Cost Sharing, dated November 9, 2001, is attached as Exhibit \_\_\_ and hereby made a~~

~~part of this Agreement (“Amended Cost Sharing Agreement”). Pursuant to the Amended Cost Sharing Agreement, at 5, the Conservancy’s total cost of construction at that time was \$3,566,970. However, Reclamation has developed a Fiscal Year 2009 (FY09) Update to the May 2001 Interim Cost Allocation using October 2008 based on October price levels of the estimated Project construction costs. The FY09 Update to the May 2001 Interim Cost Allocation allocates the reimbursable costs of the project among the Project beneficiaries based on the pro rata share of Project storage each respective entity receives in Lake Nighthorse. The Conservancy's water capital obligation allocable to its Project storage in the FY09 Update to the May 2001 Interim Cost Allocation is \$4,937,108 which includes construction costs of \$4,125,924 and estimated IDC of \$811,184 through September 30, 2008 and which takes into account Section 207 of Public Law 108-447 as amended \$6.5 million. This amount is the Conservancy’s Estimated Repayment Obligation.~~

**Comment [rcr1]:** This amount was provided to Randy K by Pat P. This amount is subject to change and is directly influenced by the timing of execution of this contract. This amount included IDC through the second quarter of 2008.

(b) The construction costs allocated to the Conservancy’s Repayment Obligation shall accrue interest during construction at the Project Interest Rate of 8.315% as established rate to be established pursuant to the provision of Section 5(f) of the Act of April 11, 1956 (70 Stat. 105) as amended by the Act of June 27, 1960 (74 Stat.255).

(c) The Estimated, Final or Remaining Repayment Obligation may be reduced by payment(s) of all or a part of ~~that~~ the rRepayment oObligation, without penalty. No additional interest shall be added to the rRepayment oObligation for the amounts paid pursuant to this subsection.

(d) At the end of the construction period of all Project Works a final cost allocation will be Performed by the Secretary pursuant to Section 6(a)(3)(B) of the



Settlement Act, as amended. The Conservancy will pay only its allocable share of joint costs of the Project Works. Any additional repayment shall ~~only~~ be warranted only for reasonable and unforeseen costs associated with project construction as determined by the Secretary in consultation with the Conservancy, taking into account Section 207 of Public Law 108-447 as amended and, the 2006 legislation setting a maximum for reimbursable costs for the first \$500 million of total project costs [Cite to Section 207 passed in 2006, and Reclamation's Decision Memorandum, "Methodology Regarding Implementation of Section 207 on Up-Front Cost-Sharing and Repayment, Animas-La Plata Project (August 2, 2006)" as amended and attached, and other appropriate documents. ~~Attach?~~

(e) The details of said costs and a draft final cost allocation will be furnished to the Conservancy by the United States, and the Conservancy reserves the right to review the input to the cost allocation, including the assignment of costs to the municipal and industrial water purpose and the allocation thereof to the Conservancy's repayment obligation. Following consultation and review by the Conservancy, the final allocation of reimbursable costs will be prepared by the United States. These costs will be subject to alternative dispute resolution as described in Article 9 if there remains a dispute in the allocation of costs.

(f) The United States shall give the Conservancy written notice of the Conservancy's ~~total water capital obligations~~ Final Repayment Obligation as established by the final cost allocation. In the event the final cost allocation establishes that the ~~total water capital obligation~~ Final Repayment Obligation of the Conservancy is more than the Estimated Repayment Obligation of \$4,937,108 ~~\$6.5 million~~ plus additional deposits, if

any, to the Escrow account, then the Conservancy will have the option to pay the additional amount, with appropriate Interest During Construction charges, 180 days from the date of written notice as an alternative to repaying this additional debt with amortization interest over a repayment period as described in Subarticle 8(g) below.

(g) After the 180-day final payment option established in Subarticle 8(f) has expired, the construction costs that are in addition to the ~~initial-Estimated~~ Repayment Obligation of ~~\$4,937,108~~~~\$6.5 million~~, plus any additional associated Interest During Construction~~additional deposits, if any, to the Escrow account, and the associated Interest During Construction~~, shall become the Final Repayment Obligation of the Conservancy. In the event that the Final Repayment Obligation indicates that additional repayment is warranted from the Conservancy, the United States will assign this additional repayment, on a pro rata basis, to a portion of the Conservancy's Project interest, subject to the procedures of ~~The United States will assign this Repayment Obligation to a pro rata share of the Conservancy's Project interest consistent with and subject to the procedures of~~ Section 6(a)(3)(B) of the Settlement Act, as amended. The formula to determine the portion of the Conservancy's Project interest that this additional repayment will be assigned is as follows:

Remaining	Total
<del>Water Supply</del> Project interest	– = (Final Repayment Obligation – Repayment Received)
x <del>Statutory</del> Project	
Requiring	Final Repayment Obligation

The above calculation to identify the Project interest assigned to the additional repayment will be rounded to the nearest whole acre-foot of storage. The United States will derive a repayment plan for the Remaining Repayment Obligation assigned to this Project interest,

~~and will issue a repayment block notice as described in Article 10 herein. The Remaining Repayment Obligation will be paid in annual installments due on or before January 10 of each year and in accordance with an annuity due payment schedule or schedules issued by the United States., and will issue a repayment block notice, as described in Article 10 herein, to the Conservancy prior to its receiving any of the pro rata Project interest assigned to the Repayment Obligation. The Repayment Obligation will be paid in annual installments due on or before January 10 of each year and in accordance with an annuity due payment schedule or schedules issued by the United States.~~ Pursuant to Section 9(c)(1) of the Reclamation Project Act of 1939, the Remaining Repayment Obligation ~~above~~ shall be repaid within a 40-year period, and shall accrue amortization interest ~~on the unpaid portion at the rate to beat the project interest rate of 8.315 percent on the unpaid portion, as~~ established pursuant to the provision of Section 5(f) of the Act of April 11, 1956 (70 Stat. 105) as amended by the Act of June 27, 1960 (74 Stat. 255).

(h) Upon final allocation, if the Conservancy elects not to pay the ~~Remaining Repayment Obligation or Final~~ Repayment Obligation to the United States for the remaining Project interest described and calculated ~~described~~ in Subarticle 8(g), then this portion of the Conservancy's Project interest to the United States, the Conservancy shall be subject to the procedures of relinquishment as specified by Section 6(a)(3)(B) of the Settlement Act, as amended.

(i) It is agreed that during construction every attempt will be made to keep non-contract costs at or below 30 percent of the final contract costs. The United States will continue to annually report to the Conservancy the dollar amount of the non-contract costs and all other construction costs.

(j) The United States has consulted and will consult annually with the Conservancy concerning the allocation of construction costs and any interest during construction to be payable by the Conservancy under this Contract. The Use of Facilities Procedure is the methodology used to allocate construction costs for the Project, and it will not be changed for the administration of this Contract.

(k) All payments required under this Contract are due on the specified due date and will be made by electronic fund transfers.

(l) Upon execution of the contract, the Contractor shall furnish the Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising out of the Contractor's relationship with the United States.

(m) Pursuant to section 9(c)(1) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h, following payment of the ~~water capital obligation~~ Final Repayment Obligation described herein, all other contract terms will remain in full force and effect until mutually agreed upon by the Conservancy and the United States.

(n) Upon payment of the Conservancy's ~~total water capital obligation~~ Final Repayment Obligation as defined in the final cost allocation, the Conservancy's Project interest shall not be subject to relinquishment to the Secretary for any reason, subject to applicable law.

## 9. ALTERNATIVE DISPUTE RESOLUTION

(a) If a dispute should arise between the Conservancy and the United States arising out of the final cost allocation prepared by the United States, each party shall communicate in good faith and seek to resolve the dispute expeditiously and amicably. Prior to seeking judicial review of the final cost allocation, the Conservancy may pursue

Alternative Dispute Resolution ("ADR") of any issue arising out of the final cost allocation which affects the Conservancy and remains unresolved after direct communication between the parties.

(b) Either party may demand ADR in writing, which demand shall include the name of a qualified individual suggested by the party demanding ADR, together with a statement of the matter of controversy.

(1) Within twenty (20) days after such demand the other party shall either agree to the named individual, or suggest another arbitrator. If the parties cannot agree on such naming within 20 additional days, such individual shall be named by the American Arbitration Association.

(2) The ADR costs and expenses of each party shall be borne by that party and all the joint fees and other expenses pursuant to this Article shall be borne equally by both parties.

(3) The hearing shall be held at such time and place as designated by the ~~judge-arbitrator~~ on at least twenty (20) days written notice to the parties.

(4) All decisions determined by this ADR process shall be sent to all parties to the proceedings.

(5) As to any procedures regarding the conduct of the ADR that are not specified either in this Contract or in any other written agreement signed in advance of the hearing, the parties shall follow the Commercial Arbitration Rules of the American Arbitration Association.

(c) Nothing in this Article shall be construed to restrain or prevent the United States from performing any act required or authorized under federal law, or the Conservancy from otherwise challenging any such act.

(d) Nothing contained in this Article shall be deemed to give the arbitrator any authority, power, or right to alter, change, amend, add to, or subtract from any of the provisions of this Contract. Nothing in this article shall be construed as a delegation of authority by the United States.

(e) Nothing in this Article shall be construed as a waiver of sovereign immunity by any party or consent to suit by any party in any forum.

#### 10. METHOD FOR ESTABLISHING BLOCKS FOR PROJECT DELIVERY AND REPAYMENT

(a) When the Project Works defined in Article 2(a) are completed, tested, and the Project becomes available for use by the Conservancy, the United States shall, after consultation, give the Conservancy written notice, referred to herein as the "block notice," at least 12 months prior to the date when the Project water becomes available for delivery touse by the Conservancy. The block notice shall contain:

- (1) A description of the member entities included in the block.
- (2) The quantity of Project Water available to the Conservancy for the block.
- (3) That portion of Statutory Water Allocation available to the Conservancy as a firm full water supply.

(b) If a Remaining Repayment Obligation~~repayment obligation~~ has been assigned pro rata to a quantity of the Conservancy's Project interest pursuant to Article

8(g) herein, then the block notice establishing the availability of that water supply will also contain:

(1) A designation of that part of the Conservancy's municipal and industrial cost allocation apportioned to the block.

(2) A payment schedule for repayment of those costs, including a breakdown of the amount and due date of each payment to be paid by the Conservancy.

(c) Each block notice and amendment thereto shall become a part of this contract.

#### 11. PAYMENT OF OPERATION, MAINTENANCE, AND REPLACEMENT COSTS

(a) The operation, maintenance, and replacement (OM&R) costs allocated to the Conservancy will be comprised of:

(1) the Conservancy's ~~pro rata~~ share of Fixed OM&R costs, as defined in the Intergovernmental Agreement. The Conservancy's share, as identified in the draft Intergovernmental Agreement, would be 1.6% of the total Fixed OM&R costs. The final allocation of Fixed OM&R costs will be finalized and stated in the agreement between Reclamation and the Project Sponsors which transfers OM&R responsibility to the Project Sponsors actually incurred by the Project Operator in connection with Project facilities and/or operations that benefit all users of the Project, based on the amount of water storage actually purchased and paid for by the Conservancy in accordance with Article 8 above;

(2) Variable OM&R costs, which are the actual costs of replacing Project Water released by request of the Conservancy, are further defined in the Intergovernmental Agreement;

(3) provided, however, that the Intergovernmental Agreement contains provisions for a Variable OM&R fund, designed to pay all or part of the Project Variable OM&R costs. ~~Conservancy may enter [has entered] into the Intergovernmental Agreement that would affect the operation and maintenance of the Project and the payment therefore among the Project participants.~~

(b) The Conservancy agrees to pay the Project Operator, in advance, its ~~proportionate~~ share of the OM&R costs ~~allocated to~~ associated with said Project Works. ~~OM&R costs shall be allocated by the Project Operations Committee pursuant to Article 4.~~ An OM&R charge notice shall be furnished annually by the Project Operator, which amount will be paid by the Conservancy in advance annually. If the funds advanced by the Conservancy under this article are less than the actual cost of OM&R properly chargeable to the Conservancy for the period advanced, a supplemental notice will be issued and the Conservancy shall advance such additional funds by the date specified in the supplemental notice. If the actual costs are less than the funds advanced, an appropriate adjustment will be made in the notice issued the next succeeding period.

(c) If the Intergovernmental Agreement is not finalized, is voided, or is otherwise terminated, the Conservancy's OM&R allocation will be comprised of:

(1) the Conservancy's pro-rata share of OM&R costs actually incurred by the Project Operator in connection with Project facilities and/or operations that benefit all users of the Project, based on the amount of water storage actually purchased and paid for by the Conservancy, in accordance with Article 8 above;

(2) the actual cost of replacing Project Water released by request of the Conservancy.



12. USE AND DISPOSAL OF WATER DURING CONSTRUCTION

(a) Prior to the completion of the Project Works as defined in Article 2(a), the Conservancy may use that portion of the Statutory Water Allocation that is met by direct diversion of flows from the San Juan River System, pursuant to permits held by it or its subcontractors issued by the New Mexico State Engineer. The United States has no objection to such use of this water until such water is necessary for Project purposes.

(b) Upon completion and initial testing of the Project Works as defined in Article 2(a), and at any other subsequent time, Project Water which is not made available to the Conservancy as provided in Articles 6 and 10, may be disposed of by the United States. The charges shall only be sufficient to cover the operation, maintenance, and replacement costs appropriate for such water delivery. The Conservancy shall, however, have the first opportunity to utilize this Project Water paying only the applicable OM&R costs.

13. WATER SHORTAGES

There may occur at times during any year a shortage in the quantity of water available for furnishing to the Conservancy through and by means of the Project, but in no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising from a shortage, on account of errors in operation, drought, or any other causes. In any year in which there may occur a shortage from any cause, the United States reserves the right to apportion the available water allocation pursuant to the Settlement Act, as amended, and applicable laws, including the Animas-La Plata Project Compact, among the Conservancy, Tribes, and

others entitled to receive water from the Project in accordance with conclusive determinations of the Contracting Officer.

14. LEVY OF ASSESSMENTS, TOLLS AND CHARGES

The Conservancy shall, to the extent allowed by law, cause to be levied and collected all necessary assessments, tolls, and other charges and will use all of the authority and resources of the Conservancy to meet the obligations of the Conservancy specified herein, to make in full all payments to be made pursuant to this contract on or before the date such payments become due, and to meet its other obligations under this contract.

15. COVENANT AGAINST CONTINGENT FEES

~~16.~~ The Conservancy warrants that it has not employed or retained any person or selling agency to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Conservancy for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this contract without liability, or at its discretion, to add to the repayment obligation or consideration the full amount of such commission, percentage, brokerage, or contingent fee. ~~—ASSIGNMENT LIMITED—SUCCESSORS~~

~~AND ASSIGNS OBLIGATED~~

~~The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract shall be valid until approved in writing by the United States. Approval pursuant to this section shall be for the sole purposes of ensuring that any assignment or transfer complies with the terms of~~

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~~this contract, that the assignee is capable of fulfilling the Conservancy's duties and obligations under this contract, and that the end use of the Statutory Water Allocation falls within the uses contemplated in the environmental compliances for the Project.~~

**Comment [rcr2]:** This article has been moved to the standard article portion of the contract.

16. THIRD-PARTY CONTRACTS

(a) Any contract entered into between the Conservancy and any third-party for the use of its Statutory Water Allocation under this Contract shall be subject to written approval of the United States ~~in order to determine solely the effects on the operation of the Project facilities in light of existing environmental statutes compliance.~~ The subcontract requires the third party to be bound to the provisions of this Contract including, but not be limited to, terms of measurement, operations, environmental compliance, and the impact of defaults on Project Works. ~~Approval shall not be unreasonably withheld. The United States shall have 60 days after receipt of the proposed third-party contract to inform the Conservancy of its approval or denial of the contract.~~ If additional environmental compliance is required, the Conservancy and the United States will develop a schedule for approval.

(b) The Conservancy shall not receive any valuable consideration for such subcontract in excess of the cost of the water to the Conservancy (including administrative costs). The Conservancy shall not extract any brokerage, profits, commission or fee, from any person on the water to be delivered under this subcontract. In connection with any such subcontract, the President of the Conservancy shall certify to the United States that the conveyance with respect to water delivery was without consideration except as provided above, and that no brokerage, profits, commission, fee, or other charge of any kind was charged to the subcontractor or any person acting on

behalf of the subcontractor. Any exceptions to this article will be covered under a separate agreement.

17. TITLE TO PROJECT WORKS AND PROJECT REPAIR

(a) Title to the Project Works shall be held by the United States, unless specifically provided otherwise by Congress, notwithstanding transfer of the care, operation, and maintenance of any said works to the Project Operator.

(b) If the Conservancy and other members of the Project Operations Committee anticipate they will pay any portion of the cost for repairs or replacement of Project Works, the Committee shall have the right to consultation with the United States on the repairs or replacements and shall have the option to perform or direct the performance of the repairs or replacements themselves.

18. SEVERABILITY

(a) If any provisions of Articles 19 through 35 are in conflict with Articles 1 through 18, then the provisions of Articles 1 through 18 shall take precedence.

(b) If any provisions of the contract shall, for any reason be determined to be illegal or unenforceable, the parties, nevertheless, intend that the remainder of the contract shall remain in full force and effect. Furthermore, any adjustments or variations to this contract necessitated by future negotiations with other Project beneficiaries can be accomplished by amending this contract.

19. CHARGES FOR DELINQUENT PAYMENTS

(a) The Conservancy shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Conservancy shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the

Conservancy shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the Conservancy shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the Conservancy shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

20. GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

(a) The obligation of the Conservancy to pay the United States as provided in this contract is a general obligation of the Conservancy notwithstanding the manner in which the obligation may be distributed among the Conservancy's water users or subcontractors and notwithstanding the default of individual water users or subcontractors in their obligations to the Conservancy.

(b) The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this contract. The United States shall not make water available to the Conservancy through project facilities during any period in which the Conservancy may be in arrears in the advance payment of any operation and maintenance charges due the Project Operator or in arrears for more than 12 months in the payment of any construction charges due the United States. The Conservancy shall not furnish water made available pursuant to this contract for parties which are in arrears in the advance payment of operation and maintenance charges or in arrears more than 12 months in the payment of construction charges as levied or established by the Conservancy.

21. NOTICES

Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Conservancy, when mailed, postage prepaid, or delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138-1102, and on behalf of the United States, when mailed, postage prepaid, or delivered to the La Plata Conservancy District, 1529 Hwy. 170, La Plata, New Mexico 87418. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

22. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

The expenditure or advance of any money or the performance of any obligation of the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Conservancy from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

23. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress, Resident Commissioner or official of the Conservancy shall benefit from this contract other than as a water user in the same manner as other water users.

24. CHANGES IN CONSERVANCY'S ORGANIZATION

While this contract is in effect, no change may be made in the Conservancy's organization, by dissolution, consolidation, merger or otherwise, except upon the Contracting Officer's written consent, unless all obligations of the Conservancy under this contract have been satisfied, or provision has been made for the satisfaction of all such obligations.

25. ASSIGNMENTS LIMITED – SUCCESSORS AND ASSIGNS LIMITED

The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract or any right or interest therein by either party shall be valid until approved in writing by the other party.

26. BOOKS, RECORDS AND REPORTS

The Conservancy shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including: the Conservancy's financial transactions, water supply data, water-use data; and other matters that the Contracting Officer may reasonably require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may reasonably require. Subject to applicable Federal and State laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

27. RULES, REGULATIONS, AND DETERMINATIONS

(a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Reclamation law.

(b) The Contracting Officer shall have the right to make determinations necessary to administer this contract that are consistent with the expressed and implied

provisions of this contract, the laws of the United States and the State of New Mexico, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Conservancy.

28. QUALITY OF WATER

The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

29. WATER AND AIR POLLUTION CONTROL

The Conservancy, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of New Mexico, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

30. WATER CONSERVATION

Prior to the delivery of water provided from or conveyed through Federally constructed or Federally financed facilities pursuant to this contract, the Conservancy shall develop an effective water conservation program acceptable to the Contracting Officer. The water conservation program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. At subsequent 5-year intervals, the Conservancy shall submit a report on the results of the program to the Contracting Officer for review. Based upon the conclusions of the review, the Contracting Officer and the Conservancy shall consult and agree to continue or to revise the existing water conservation program.

31. EQUAL OPPORTUNITY

During the performance of this contract, the Conservancy agrees as follows:

(a) The Conservancy will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Conservancy will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Conservancy agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.



(b) The Conservancy will, in all solicitations or advertisements for employees placed by or on behalf of the Conservancy, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The Conservancy will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Conservancy's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Conservancy will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Conservancy will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Conservancy's noncompliance with the nondiscrimination clauses of this contract or with any of the such rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Conservancy may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Conservancy will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Conservancy will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Conservancy becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Conservancy may request the United States to enter into such litigation to protect the interests of the United States.

## 32. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

(a) The Conservancy shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any



other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U. S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this contract, the Conservancy agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs and documents.

(c) The Conservancy makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts or other Federal financial assistance extended after the date hereof to the Conservancy by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Conservancy recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article, and that the United States reserves the right to seek judicial enforcement thereof.

33. MEDIUM FOR TRANSMITTING PAYMENTS

(a) All payments from the Contractor to the United States under this contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

(b) Upon examination of the contract, the Conservancy shall furnish the Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose for requiring the Conservancy's TIN is for collecting and reporting any delinquent amounts arising out of the Conservancy's relationship with the United States.

34. CONTRACT DRAFTING CONSIDERATIONS

Articles 1 through 33 of this Contract have been drafted, negotiated, and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party shall be considered to have drafted the stated articles.

35. CONSTRAINTS ON AVAILABILITY OF WATER

(a) In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a Condition of Shortage in the quantity of water to be made available to the Conservancy pursuant to this Contract. In the event the Contracting

Officer determines that a Condition of Shortage appears probable, the Contracting Officer will notify the Conservancy of said determination as soon as practicable.

(b) If there is a Condition of Shortage because of errors in physical operations of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet current and future legal obligations, then no liability shall accrue against the United States or any of its officers, agents, or employees for damage, direct or indirect, arising therefrom.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be duly executed as of the day and year first above written.

Approved:

THE UNITED STATES OF AMERICA

\_\_\_\_\_  
Solicitor's Office

By: \_\_\_\_\_  
Regional Director  
Upper Colorado Region  
Bureau of Reclamation

Attest:

LA PLATA CONSERVANCY  
DISTRICT, NEW MEXICO

By: \_\_\_\_\_  
Stella Montoya, President

List of Attachments: Exhibit A Environmental Commitments  
Exhibit B Escrow Agreement with Instructions [Need this?]  
Exhibit C Methodology Regarding Implementation of Section 207  
on Up-Front Cost-Sharing and Repayment, Animas-La Plata Project (August 2, 2006), as  
amended