Contract No. 09-WC-40-355

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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THIS REPAYMENT CONTRACT, made this 8th day of September, 2009, 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

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) Adequate water rights for the Project have been obtained in Colorado and New Mexico.

(f) 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.

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

(h) 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.

(i) 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.

(j) 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 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.

(k) 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 7 herein.

(l) 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 Article 7(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) "Project Construction Committee" means the committee 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.

(g) "Project Operation Committee" means the committee 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. 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.

(h) "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.

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

(j) "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.

(k) "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.

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

(m) "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.

(n) "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).

(o) "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, as determined through the Final Cost Allocation described in Article 7(d) below.

(p) "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 Articles 7(d) and 7(g) below.

(q) "Intergovernmental Agreement" means that agreement, effective March 4, 2009, which has been executed by those entities, and their authorized assignees, that have been identified by the Settlement Act, as amended, to receive a water allocation, that created the Animas- La Plata Operations, Maintenance, and Replacement Association to operate and maintain the Project after construction is completed.

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, as required by law, 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. 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 and the Project Operations Committee's duties may be modified by the Intergovernmental Agreement or the OM&R Contract.

4. 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 after consultation with the Conservancy. Measurement of water diverted directly from Lake Nighthorse shall be measured at the point of diversion. Water delivered to the Conservancy's users or subcontractors pursuant to this contract shall be measured by the users at their points of diversion in the San Juan River System. 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 ensure that the Conservancy annually receives its Statutory Water Allocation.

(b) Once water is released from the outlet works of Ridges Basin Dam, 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.

5. 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 Article 7(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 Article 7(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. Unless the Intergovernmental Agreement is in effect, 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.

6. 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.

7. METHOD OF PAYMENT FOR PROJECT CONSTRUCTION COSTS

(a) Reclamation has developed a Fiscal Year 2009 (FY09) Update to the May 2001 Interim Cost Allocation using October 2008 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 ***$5,076,072*** which includes construction costs of $4,177,110 and estimated IDC of $898,962 through April 30, 2009 and which takes into account Section 207 of Public Law 108-447 as amended. This amount is the Conservancy's Estimated Repayment Obligation.

(b) The construction costs allocated to the Conservancy shall accrue interest during construction at the Project Interest Rate of 8.315% 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).

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

(d) At the end of the construction period of the multipurpose 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 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, 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.

(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 8 if there remains a dispute in the allocation of costs.

(f) The United States shall give the Conservancy written notice of the Conservancy's Final Repayment Obligation as established by the final cost allocation. In the event the final cost allocation establishes that the Final Repayment Obligation is in excess of any payments made by the Conservancy toward the Estimated Repayment Obligation of ***$5,076,072*** the Conservancy will have the option to pay the remaining balance of the Final Repayment Obligation 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 Article 7(g) below.

(g) After the 180-day final payment option established in Article 7(f) has expired, the unpaid portion of the Final Repayment Obligation shall become the Remaining Repayment Obligation of the Conservancy. The United States will assign that Remaining Repayment Obligation, on a pro rata basis, to a portion of the Conservancy's Project interest, 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 Remaining Repayment Obligation will be assigned is as follows:

$$\text{Remaining Project interest Requiring Repayment} = \frac{\text{(Final Repayment Obligation – Repayment Received)}}{\text{Final Repayment Obligation}} \times \text{Total Project interest}$$

The above calculation to identify the Project interest assigned to the Remaining Repayment Obligation 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 9 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. Pursuant to Section 9(c)(1) of the Reclamation Project Act of 1939, the Remaining Repayment Obligation shall be repaid within a 40-year period, and shall accrue amortization interest at 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 to the United States for the remaining Project interest described and calculated in Article 7(g), then this portion of the Conservancy's Project interest 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) Pursuant to section 9(c)(1) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h, following payment of the 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.

(m) Upon payment of the Conservancy's 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.

8. 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 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.

9. 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". 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 has been assigned pro rata to a quantity of the Conservancy's Project interest pursuant to Article 7(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.

10. 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 share of Fixed OM&R costs, as defined in the Intergovernmental Agreement. The Conservancy's share, as identified in the 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 OM&R Contract between Reclamation and the Animas-La Plata Operations, Maintenance, and Replacement Association, which transfers OM&R responsibility to the Animas-La Plata Operations, Maintenance, and Replacement Association;

(2) Variable OM&R costs, which are 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.

(b) The Conservancy agrees to pay, in advance, its share of the OM&R costs associated with said Project Works.

(1) While the Intergovernmental Agreement is in effect, the Project Operator shall annually prepare an OM&R charge notice which shall be furnished to the Animas-La Plata Operations and Maintenance Association and to the Conservancy, which the Conservancy shall pay in advance annually.

(2) If the Intergovernmental Agreement is not finalized, is voided, or is otherwise terminated the Conservancy agrees to pay the Project Operator, in advance, its share of OM&R costs associated with said Project Works. An OM&R charge notice shall be furnished annually by the Project Operator, which will be paid by the Conservancy in advance annually.

(3) 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 advance, 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 7 above;

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

11. 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 5 and 9, 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.

12. 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. Unless the Intergovernmental Agreement is in effect, 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.

13. 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.

14. COVENANT AGAINST CONTINGENT FEES

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.

15. THIRD-PARTY CONTRACTS

(a) Any contract entered into between the Conservancy and any third-party for the use of the Conservancy's Statutory Water Allocation under this Contract shall be subject to written approval of the United States in order to determine the effects on the operation of the Project facilities including compliance with existing environmental statutes. The

third party contract 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 and water conservation measures pursuant to Article 29). 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 between the Conservancy and the United States.

16. 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.

17. SEVERABILITY

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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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. Approval by the Secretary shall be made in a timely manner and shall not be unreasonably withheld.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. CONTRACT DRAFTING CONSIDERATIONS

Articles 1 through 17 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.

34. 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:

Solicitor's Office

THE UNITED STATES OF AMERICA

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 Methodology Regarding Implementation of Section 207 on Up-Front Cost-Sharing and Repayment, Animas-La Plata Project (August 2, 2006), as amended

EXHIBIT A

ENVIRONMENTAL COMMITMENTS

4.6.4.3 Impact Analysis

The following sections discuss potential impacts to ITAs and Environmental Justice of Refined Alternatives 4 and 6 and the No Action Alternative. In addition, mitigation measures are proposed to reduce or eliminate potential significant impacts.

4.6.4.3.1 Refined Alternative 4

Indian Trust Assets

Refined Alternative 4 Impact 1 - Potentially Significant: Refined Alternative 4 does not meet the terms and conditions of the Settlement Agreement for the Colorado Ute Tribes.

Refined Alternative 4 would provide storage for a portion of the Colorado Ute Tribes' assured water rights. However, the 39,960 afy of allowed depletion for the Colorado Ute Tribes is 13,240 afy less than that identified in the Settlement Agreement. All water provided under Refined Alternative 4 must be used for M&I purposes, while the Settlement Agreement specified that 3,400 afy of depletion be used for irrigation purposes by the Southern Ute Indian Tribe, and 26,300 afy be used for irrigation purposes by the Ute Mountain Ute Tribe. Because of the reduced amount of depletion, the lack of irrigation water and facilities, the precise terms of the original Settlement Agreement would not be met under Refined Alternative 4.

However, Refined Alternative 4 would provide the Colorado Ute Indian Tribes a means to purchase approximately 13,000 afy through the use of a $40 million water acquisition fund. This amount could be used to acquire private water rights on a willing buyer/willing seller basis. These funds could also be redirected for on-farm development, water delivery infrastructure, or other economic development uses. Most important, the Colorado Ute Tribes have endorsed Refined Alternative 4 as being sufficient substitute for the original elements of the 1986 Settlement Agreement.

Mitigation for Refined Alternative 4 Impact 1: Seek modification of Settlement Agreement.

Refined Alternative 4 would meet the Settlement Agreement if Congress passes any legislation, with the support of the Colorado Ute Tribes, that specifies that the terms and conditions of Refined Alternative 4 satisfy the Colorado Ute Tribes' water rights. Both Colorado Ute Tribes have passed resolutions supporting the selection of Refined Alternative 4 for settlement of all their remaining water rights claims.

Refined Alternative 4 Impact 2 - Significant: Under present conditions, Refined Alternative 4 reduces the water supply available for the Jicarilla Apache Tribe water rights in the San Juan River.

Relative to no action, Refined Alternative 4 reduces the present supply available to the Jicarilla Apache Tribe to allow utilization of its water rights consistent with the ESA. Section 7(a)(2)of the ESA states that each federal agency shall, in consultation with the Secretary, insure that any action authorized, funded, or carried out by that agency shall not jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. For federal actions in the San Juan basin, such as ALP, the Service has issued reasonable and prudent alternatives which have allowed the action to go forward. In the recent past, these RPA's have required Reclamation to participate in research to determine the flows needed to recover endangered fish species and then to operate Navajo Dam to mimic a natural hydrograph. Thus, according to current modeling, full implementation of the

flow recommendations, NIIP, and ALP could limit further tribal water development in the San Juan Basin. Additionally, there is a potential for an increased risk of an ESA Section 9 violation (Section 9 prohibits the "take" of any listed species) by any non-federal developer of San Juan River Basin water. Because Section 9 of the ESA prohibits a range of activities that include habitat modification, any non-federally related tribal water development activities will incur the potential for an increased risk of "take" of a listed species.

Mitigation for Refined Alternative 4 Impact 2: The following measures would provide some mitigation for the projected impacts.

While Reclamation agrees that future Jicarilla Apache Tribe water development may be adversely affected because of Section 7 concerns, Reclamation also believes that it is still possible that some Jicarilla Apache Tribe water development could occur even if associated with a federal action. The Service, working with Reclamation and other relevant federal agencies, could develop other potential measures, including water management strategies (e.g. appropriate shortage sharing based on actual water use), that can be undertaken as RPA's that would allow development of future water projects. Whether such RPA's exist is something that will only be determined through the section 7 consultation process. Thus, it is premature to conclude that development of NIIP and ALP will preclude further federally-related water development in the San Juan basin. The Section 7 consultation process, including participation of the tribe seeking to use water, will need to evaluate all potential RPAs.

It should also be noted that the Administration Proposal, as represented by Refined Alternative 4, was developed, in part, to eliminate the impact of the original ALP Project on the Jicarilla Apache Tribe. The original project envisioned the depletion of 149,000 afy from the San Juan River Basin. Although the full project has not been cleared to proceed under ESA , the finality of the Administration Proposal intended to ensure that both the Jicarilla Apache Tribe and Navajo Nation will not be competing with additional ALP Project depletions in the future. In sum, this proposed action, in and of itself, is a partial mitigation measure for other water development in the San Juan Basin, intended to protect the trust assets of the Jicarilla Apache Tribe (as well as the Navajo Nation).

However, Reclamation recognizes that only a minimal amount of water is available under today's circumstances and the Preferred Alternative will have some effect on the trust resources of the Jicarilla Apache Tribe, particularly if no RPAs are eventually developed to offset or allow future additional depletions. Reclamation has therefore developed other mitigation measures, including:

- Continue active participation in the San Juan River Basin Recovery Implementation Program to promote the dual goals of recovery of endangered species and proceed with water development in the basin. The SJRRIP is key to facilitating additional water development by the Jicarilla Apache Tribe. Reclamation's participation includes:

  - Provide substantial technical support in the development and refinement of a comprehensive hydrology model to allow realistic, supportable projections of future water uses within the basin;

  - Continue to optimize the operating rules for Navajo Dam to provide more efficient fulfillment of the flow recommendations necessary for endangered species recovery;

  - Implement an adaptive management program associated with the operation of Navajo Reservoir to evaluate biologic responses to a more natural hydrograph.

- Operate the Durango Pumping Plant to limit pumping during dry years, allowing more water to be available in Navajo Reservoir to meet project demands (see Section 3.2).

- Facilitate discussions between the Jicarilla Apache Tribe and other parties with interests in the San Juan River Basin. Interested parties will include, but not be limited to, the Colorado Ute Tribes, Navajo Nation, the Service, and private parties with existing contracts from Navajo Reservoir. Discussions will aim to develop options for obtaining the 25,500 afy depletion from Navajo River or Reservoir, which is authorized under the Jicarilla Apache Tribe Water Rights Settlement Act. Such discussions among Reclamation, the Jicarilla Apache Tribe, and Public Service Company of New Mexico (PNM) are currently underway to lease 16,200 afy of their water rights to PNM. If successful, this would place a portion of the Jicarilla Apache Tribe's depletion allocation in the baseline.

- Reclamation will work with the Navajo Nation and the Jicarilla Apache Tribe to combine resources in evaluating options for proceeding with the Navajo-Gallup Project, the Navajo River Water Development Plan, and restoration if the Hogback Project to try and minimize the likelihood that any single Tribe bears a disproportionate burden for the conservation of listed species under the ESA.

- Reclamation, through its Native American Affairs and technical assistance programs, will work with the Jicarilla Apache Tribe to facilitate its ability to independently utilize the San Juan River basin hydrologic model to ensure more effective participation in the SJRBRIP and other appropriate uses.

- Reclamation will initiate an independent review of the hydrologic model to ensure its accuracy and value as a tool in future water planning activities.

- Reclamation will consult with the Jicarilla Apache Tribe on the implementation of the above mitigation measures and will commence such consultation early in the implementation process.

Refined Alternative 4 Impact 3 - Significant: Refined Alternative 4 limits the water supply available for the development of the proposed Navajo-Gallup Project designed to deliver drinking water to portions of the Navajo Nation with limited or no supply.

Relative to no action, Refined Alternative 4 reduces the present supply available to the Navajo Nation to allow utilization of its water rights consistent with the ESA. Section 7(a)(2)of the ESA states that each federal agency shall, in consultation with the Secretary, insure that any action authorized, funded, or carried out by that agency shall not jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. For federal actions in the San Juan Basin, such as ALP, the Service has issued reasonable and prudent alternatives which have allowed the action to go forward. In the recent past, these RPA's have required Reclamation to participate in research to determine the flows needed to recover endangered fish species and then to operate Navajo Dam to mimic a natural hydrograph. Thus, full implementation of the flow recommendations, NIIP, and ALP could potentially limit further tribal water development in the San Juan basin. Additionally, there is a potential for an increased risk of an ESA Section 9 violation (Section 9 prohibits the "take" of any listed species) by any non-federal developer of San Juan River Basin water. Because Section 9 of the ESA prohibits a range of activities that include habitat modification, any non-federally related tribal water development activities will incur the potential for an increased risk of "take" of a listed species.

The 2,340 afy depletion provided under the ALP Project would only satisfy a portion of the water needs of the Navajo Nation. The new NNMP would help meet current water demands in the Shiprock area.

Mitigation for Refined Alternative 4 Impact 3: The following measures would provide some mitigation for the projected impacts.

While Reclamation agrees that future Navajo Nation water development may be adversely affected because of Section 7 concerns, Reclamation also believes that it is still possible that some Navajo Nation water development could occur even if associated with a federal action. The Service, working with Reclamation and other relevant federal agencies, could develop other potential measures, including water management strategies, that can be undertaken as RPA's that would allow development of future water projects. Whether such RPA's exist is something that will only be determined through the Section 7 consultation process. Thus, it is premature to conclude that development of NIIP and ALP will preclude further federally-related water development in the San Juan basin. The Section 7 consultation process, including participation of the tribe seeking to use water, will need to evaluate all potential RPAs.

It should be reiterated that the Administration Proposal, as represented by Refined Alternative 4, was developed, in part, to eliminate the impact of the original ALP Project on the Navajo Nation. The original project envisioned the depletion of 149,000 afy from the San Juan River Basin. Although the full project has not been cleared to proceed under ESA , the finality of the Administration Proposal intended to ensure that both the Navajo Nation and Jicarilla Apache Tribe will not be competing with additional ALP Project depletions in the future. In sum, this proposed action, in and of itself, is mitigation to the trust assets of the Navajo Nation (as well as the Jicarilla Apache Tribe). Other mitigation includes:

- Continue active participation in the San Juan River Basin Recovery Implementation Program to promote the dual goals of recovery of endangered species and proceed with water development in the basin. The SJRBRIP is key to facilitating additional water development by the Navajo Nation. Reclamation's participation includes:
  - Provide substantial technical support in the development and refinement of a comprehensive hydrology model to allow realistic, supportable projections of future water uses within the basin;
  - Continue to optimize the operating rules for Navajo Dam to provide more efficient fulfillment of the flow recommendations necessary for endangered species recovery;
  - Implement an adaptive management program associated with the operation of Navajo Reservoir to evaluate biologic responses to normative hydrograph.
- Operate the Durango Pumping Plant to limit pumping during dry years, allowing more water to be available in Navajo Reservoir to meet project demands (see Section 3.2).
- Facilitate discussions between the Navajo Nation and other parties with interests in the San Juan River Basin. Interested parties will include, but not be limited to, the Colorado Ute Tribes, Jicarilla Apache Tribe, the Service, and private parties with existing contracts from Navajo Reservoir. Discussions will aim to develop options for obtaining adequate water for the Navajo-Gallup Project.

- Reclamation will work with the Navajo Nation and the Jicarilla Apache Tribe to combine resources in evaluating options for proceeding with the Navajo-Gallup Project, the Navajo River Water Development Plan, and restoration of the Hogback Project to try and minimize the likelihood that any single tribe bears a disproportionate burden for the conservation of listed species under the ESA.

- Reclamation will initiate an independent review of the hydrologic model to ensure its accuracy and value as a tool in future water planning activities.

- Reclamation will consult with the Navajo Nation on the implementation of the above mitigation measures and will commence consultation early in the implementation process.

The following mitigation measures may affect the ability of the Navajo-Gallup Project to go forward, but are beyond the control of Reclamation as a part of the ALP Project:

- An alternate project design that would take water from the San Juan River below its confluence with the Animas River may increase the potential yield for the project while protecting flows for endangered fish. In this case, releases from Navajo Dam would be supplemental to river flows, leveraging the limited storage volume available and making use of times when there are flows in excess of fish needs in the river.

- The Navajo-Gallup Project could be modified to reduce demands.

- The Navajo Nation could elect to utilize a portion of the NIIP allocation to meet these needs.

Refined Alternative 4 Impact 4 - Significant: Refined Alternative 4 reduces the water supply available for restoration of the Hogback Project in the San Juan River.

Relative to no action, Refined Alternative 4 reduces the present supply available to the Navajo Nation to allow utilization of its water rights consistent with the ESA. Section 7(a)(2)of the ESA states that each federal agency shall, in consultation with the Secretary, insure that any action authorized, funded, or carried out by that agency shall not jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. For federal actions in the San Juan Basin, such as ALP Project, the Service has issued reasonable and prudent alternatives which have allowed the action to go forward. In the recent past, these RPA's have required Reclamation to participate in research to determine the flows needed to recover endangered fish species and then to operate Navajo Dam to mimic a natural hydrograph. Thus, full implementation of the flow recommendations, NIIP, and the ALP Project could potentially limit further tribal water development in the San Juan basin. Additionally, there is a potential for an increased risk of an ESA Section 9 violation (Section 9 prohibits the "take" of any listed species) by any non-federal developer of San Juan River Basin water. Because Section 9 of the ESA prohibits a range of activities that include habitat modification, any non-federally related tribal water development activities will incur the potential for an increased risk of "take" of a listed species.

Mitigation for Refined Alternative 4 Impact 4: The following measures would provide some mitigation for the projected impacts.

Again it is reiterated that the Administration Proposal, as represented by Refined Alternative 4, was developed, in part, to eliminate the impact of the original ALP Project on the Navajo Nation. The original project envisioned the depletion of 149,000 afy from the San Juan River Basin. Although the

full project has not been cleared to proceed under ESA , the finality of the Administration Proposal intended to ensure that both the Navajo Nation and Jicarilla Apache Tribe will not be competing with additional ALP Project depletions in the future. In sum, this proposed action, in and of itself, is mitigation to the trust assets of the Navajo Nation (as well as the Jicarilla Apache Tribe). Other mitigation includes:

- ❑ Continue active participation in the San Juan River Basin Recovery Implementation Program to promote the dual goals of recovery of endangered species and proceed with water development in the basin. The SJRBRIP is key to facilitating additional water development by the Navajo Nation. Reclamation's participation includes:
  - Provide substantial technical support in the development and refinement of a comprehensive hydrology model to allow realistic, supportable projections of future water uses within the basin;
  - Continue to optimize the operating rules for Navajo Dam to provide more efficient fulfillment of the flow recommendations necessary for endangered species recovery;
  - Implement an adaptive management program associated with the operation of Navajo Reservoir to evaluate biologic responses to more natural hydrograph.
- ❑ Operate the Durango Pumping Plant to limit pumping during dry years, allowing more water to be available in Navajo Reservoir to meet project demands (see Section 3.2).
- ❑ Facilitate discussions between the Navajo Nation and other parties with interests in the San Juan River Basin. Interested parties will include, but not be limited to, the Colorado Ute Tribes, the Jicarilla Apache Tribe, the Service, and private parties with existing contracts from Navajo Reservoir. Discussions will aim to develop options for obtaining the 16,420 afy depletion from the San Juan River to meet the needs of the Hogback Project.
- ❑ Reclamation will work with the Navajo Nation and the Jicarilla Apache Tribe to combine resources in evaluating options for proceeding with the Hogback Project, the Navajo-Gallup Project, and the Navajo River Water Development Plan to try and minimize the likelihood that any single tribe bears a disproportionate burden for the conservation of listed species under the ESA.
- ❑ Reclamation will initiate an independent review of the hydrologic model to ensure its accuracy and value as a tool in future water planning activities.
- ❑ Reclamation will consult with the Navajo Nation on the implementation of the above mitigation measures and will commence consultation early in the implementation.

The following mitigation measures may affect the ability of the Hogback Project to be restored, but are beyond the control of Reclamation as a part of the ALP Project:

- ❑ Private rights could be acquired to meet these needs.
- ❑ The project could be modified to reduce demands.

- The Navajo Nation could elect to utilize a portion of the NIIP allocation to meet these needs.

Refined Alternative 4 Impact 5 - Potentially Positive: **Land purchased with funds could potentially become trust lands.**

If land is purchased with associated water rights using the water acquisition fund, such land has the potential to remain as fee land or to be taken into trust. That process may result in the Tribes needing to conduct an analysis of the impact, under NEPA, to local non-Indian communities, and providing means to mitigate such impacts as taxation and regulation of trust lands.

Mitigation for Refined Alternative 4 Impact 5: No mitigation is proposed.

Refined Alternative 4 Impact 6 - Potentially Significant: Sections of the conveyance structures proposed under the non-binding water use scenarios would cut across Colorado Ute Tribal lands, potentially impacting the use of such lands. Relocation of natural gas pipeline(s) may also impact Tribal lands.

Certain sections of the non-binding conveyance structures cut across Colorado Ute Indian reservation lands. Construction of these laterals may result in negative impacts to farmlands, homes, or various other structures in the right-of-way. Natural gas pipelines within Ridges Basin may need to be relocated across the Southern Ute Indian Reservation, potentially impacting such lands.

Mitigation for Refined Alternative 4 Impact 6: Routing of pipelines to avoid impacts and restoration of lands to their original conditions.

Obviously, no conveyance structure will be constructed, nor pipelines relocated, without consultation with and approval of the appropriate Indian tribe. Any homes or other structures on Indian lands would be avoided by routing of the conveyance pipelines. Any Tribal lands disturbed by construction of the conveyance structures would be restored to their original condition. Land would be regraded to the original contour. If croplands are impacted, farmers would receive financial compensation for any crop losses.

Refined Alternative 4 Impact 7 - Potentially Significant: **Disturbance during construction of NNMP may affect crop production.**

During construction, land would be disturbed along the NNMP corridor. Cropland would be affected. If construction activities occur during the crop production season, cropland in some locations could be taken out of production for a single season, and crops in production could be damaged.

Mitigation for Refined Alternative 4 Impact 7: Any lands disturbed by construction of the NNMP would be restored to their original condition.

Land would be regraded to the original contour. Cropland topsoil would be stockpiled during construction and replaced on cropfields at the completion of construction. As much as possible, construction would occur during periods when crops are not cultivated. Farmers would receive financial compensation for any crop losses.

Refined Alternative 4 Impact 8 - Positive: Project water could allow the Colorado Ute Tribes to further develop their mineral resources.

One non-binding water use scenario considered by the Southern Ute Indian Tribe involves opening a coal mine and building a coal-fired power plant, while the Ute Mountain Ute Tribe is considering building a gas-fired power plant. This would allow the Colorado Ute Tribes to develop their coal and natural gas reserves on the reservation, resulting in an economic benefit to the Tribes by providing increased jobs and revenue.

Mitigation for Refined Alternative 4 Impact 8: No mitigation is proposed.

Refined Alternative 4 Impact 9 - Less than Significant: The construction of the NNMP may affect Navajo Nation ITA mineral resources.

Oil and gas wells, sand and gravel, and coal resources occur near the NNMP. Existing oil and gas wells and sand and gravel and coal mining operations would not be affected, but in the future the opportunity to extract these resources could be limited to the presence of the pipeline.

Mitigation for Refined Alternative 4 Impact 9: No mitigation is proposed.

Refined Alternative 4 Impact 10 - Less than Significant: Project development could negatively impact the Colorado Ute Tribes' hunting and fishing rights.

Any project development that would negatively impact hunting and fishing resources, or access to such resources, within the Brunot Agreement Area or otherwise provided through legal settlement or consent decree, would negatively affect the Ute Mountain Ute Tribes' hunting and fishing rights.

Mitigation for Refined Alternative 4 Impact 10: No mitigation is proposed.

Environmental Justice

Refined Alternative 4 Impact 11 - Significant: Refined Alternative 4 limits the water supply available for the development of the proposed Navajo-Gallup Project designed to deliver drinking water to portions of the Navajo Nation with limited or no supply.

See discussion under Refined Alternative 4 Impact 3.

Mitigation for Refined Alternative 4 Impact 11 - See discussion under Mitigation for Refined Alternative 4 Impact 3.

Refined Alternative 4 Impact 12 - Significant: Refined Alternative 4 reduces the water supply available for the Jicarilla Apache Tribe Water Rights in the San Juan River.

Mitigation for Refined Alternative 4 Impact 12 - See discussion under Mitigation for Refined Alternative 4 Impact 3.

Refined Alternative 4 Impact 13 - Potentially Significant: Effects on residences, school, and cemetery along the NNMP corridor.

The NNMP corridor would pass within 100 feet of a minimum of 20 residences or in-use areas. A school and a cemetery on the Navajo Nation are just outside the project area. Short-term noise and vibration impacts would occur during construction and affect nearby residences and the school.

Mitigation for Refined Alternative 4 Impact 13: Reduce impacts on residences, school, and cemetery.

The NNMP corridor would be routed to minimize, and to the maximum extent possible, prevent disturbance or relocation of residences. Prior to initiating any construction activities, project planners would meet individually with all property owners within 100 feet of the corridor. If any residences are required to be relocated, the residents and the Navajo Nation would be compensated according to the stipulations of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USCA 4601-4655. Project planners would work to avoid any disturbance to the cemetery. As required under NAGPRA, consultation would take place with the Navajo Nation Historic Preservation Department and representatives from affected Navajo Nation chapters prior to disturbing any human remains or funerary objects. Additional mitigation measures would be used to minimize noise and vibration impacts. Construction activities would be scheduled during daytime hours (7:00 a.m. to 6:00 p.m.) when within 0.25 mile of a residence. Construction activities would be scheduled during non-school hours when feasible.

4.6.4.3.2 Refined Alternative 6

Potential impacts associated with Refined Alternative 6 as they relate to water resources are listed below. Impacts that could result to land and mineral resources and hunting and fishing rights would be similar to those described under Refined Alternative 4.

Indian Trust Assets

Refined Alternative 6 Impact 1 - Significant: Refined Alternative 6 does not fulfill the terms and conditions of the Settlement Act for the Colorado Ute Tribes.

While Refined Alternative 6 is meant to provide the same amount of water as the Settlement Agreement and as Refined Alternative 4, the Colorado Ute Tribes seem unwilling to accept the terms and conditions of Refined Alternative 6. In response to the Administration Proposal, the Southern Ute Indian Tribe and the Ute Mountain Ute Tribe sent a joint letter to the Secretary of the Interior expressing their desire to have legislation enacted that would authorize the settlement of the outstanding tribal claims on the Animas and La Plata Rivers on the following terms, among other things:

> *"1. The construction of a reservoir at Ridges Basin . . . to deliver the average annual depletion of 57,100 acre feet allowed under the previous biological opinions. . ."*
>
> *"2. An allocation of those annual depletions among the affected parties that is similar to that envisioned under "ALP Lite" except that the share of depletions for the benefit of the non-Indian irrigators would instead be devoted to non-agricultural local or regional non-Indian community purposes."*
>
> *"3. The decision whether to build the reservoir and its ultimate size would be resolved following the completion of the ongoing environmental analysis. That analysis would determine the size of the inactive pool. . ."*

Additionally, on August 24, 1999, the Southern Ute Indian Tribe adopted a resolution (Resolution No. 99-137) in support of the proposed legislation found in H.R. 3112, which states:

5.4 ENVIRONMENTAL COMMITMENTS

This section discusses the environmental commitments that have been made by Interior or Reclamation during the development of Refined Alternative 4 (Reclamation's Preferred Alternative). Reclamation would share responsibility for implementing measures that would avoid or reduce potential environmental impacts of the ALP Project. This responsibility would be shared with other federal agencies, the Colorado Ute Tribes, and other ALP Project beneficiaries, as well as third-party entities which could include Colorado and New Mexico state agencies, local governments, and private developers.

The commitments in this chapter summarize commitments made during the planning process and incorporated into ALP Project plan as discussed in Chapter 2 of this Final Supplemental Environmental Impact State (FSEIS), and mitigation measures proposed in Chapter 3 to reduce or avoid impacts that would otherwise occur as a result of the implementation of the Preferred Alternative. These commitments supersede commitments made by Reclamation in previous ALP Project National Environmental Policy Act (NEPA) documents.

As discussed below, the commitments described herein would be implemented by Interior, or Interior would require their implementation by construction contractors, management authorities, or third-party developers. Commitments for pre-construction activities would generally be completed by Reclamation or by contractors during the final design process and prior to construction activities. Wildlife, wetland, cultural resources and other mitigation would be completed by Reclamation as described in the following paragraphs. Some commitments, such as monitoring or additional studies, would continue beyond completion of construction of structural facilities.

The non-structural component of the Preferred Alternative (i.e., the $40 million water acquisition fund) would be administered by Interior through the Bureau of Indian Affairs (BIA). It was assumed that the use of this fund would be for acquisition of irrigated agricultural lands and that these lands would remain in irrigated production. In the event that the Colorado Ute Tribes were to elect to fund alternative activities with the water acquisition fund or were to apply for water rights transfers, it would be the responsibility of the water acquisition fund's administering agency to determine appropriate environmental protection measures. It is possible that additional NEPA compliance may be required for such alternative uses.

The use of ALP Project water by either the Colorado Ute Tribes or other ALP Project beneficiaries would result in environmental impacts that would require the implementation of avoidance design specifications and mitigation measures. To the extent that Reclamation can require developers of ALP Project water end uses to implement environmental protection elements into design, Reclamation commits to requiring certain measures as discussed in the following sections. However, all compliance responsibilities and costs associated with end use development would be the responsibility of the third-party developers. As discussed previously, additional NEPA compliance would likely be required for the development of end use facilities to occur. At such time, the lead agency would be responsible for identifying additional environmental commitments specific to the proposed end uses.

5.4.1 General Commitments

Throughout the planning process for the project, efforts have been made to avoid impacts where practicable. If avoidance was not possible, then mitigation measures have been developed to reduce the

level of impact. The mitigation measures for each resource impact were discussed in Chapter 3. In addition to the specific mitigation measures identified in Chapter 3, other management practices will be employed during construction activities to minimize environmental effects and will be included in construction specifications. Many of these measures are required in order to comply with federal, state, or local laws and regulations, regardless of whether they are specifically identified in the report. Reclamation will comply with all relevant federal, state and local laws, ordinances, regulations, and standards during the implementation of the Preferred Alternative. Reclamation will prepare and implement an Environmental Commitment Plan for the project to document and track the completion of the environmental commitments.

5.4.2 Water Resources and Hydrology Commitments

Reclamation will develop an operations plan for the Ridges Basin Pumping Plant that will schedule pumping from the Animas River in a manner to limit impacts to non-Colorado Ute Tribal entities' ability to obtain water from the San Juan River as described under Mitigation for the Refined Alternative 4 Hydrology Impact 2 in Section 3.2.

Reclamation will work with all appropriate state and federal agencies to pursue a method to protect ALP Project water return flows in the La Plata River drainage as a water supply for endangered fish as described under Mitigation for Refined Alternative 4 Hydrology Impact 3 in Section 3.2.

Reclamation will design and develop Ridges Basin Reservoir with a minimum pool of 30,000 af.

5.4.3 Water Quality Commitments

Reclamation will develop and implement a program to reduce, minimize or eliminate temporary, short-term increases in suspended sediment loading or other water quality constituents, potentially caused by project construction, through the incorporation of permits, Best Management Practices (BMPs), and sediment control structures as described under Mitigation for Refined Alternative 4 Water Quality Impacts 1-3 in Section 3.3.

Reclamation will develop and implement a program designed to reduce, minimize or eliminate the temporary, short-term increases in suspended sediment loading that may potentially occur during construction of the non-binding end uses and water conveyance systems through requiring developers and construction contractors to incorporate BMPs and sediment control devices as described under Mitigation for Refined Alternative 4 Water Quality Impact 6 in Section 3.3.

Reclamation will develop, with the Southern Ute Indian Tribe and the States of Colorado and New Mexico, and implement a program to monitor water quality in the Animas River from the Durango Pumping Plant to the confluence with the San Juan River for five years after the Durango Pumping Plant begins operation. The program will be developed to monitor compliance with Tribal and state water quality standards and criteria. The plan should include: objectives, quality assurance and control plans, and noncompliance measures.

5.4.4 Vegetation Commitments

Reclamation will ensure that construction contractors limit ground disturbance to the smallest feasible areas, and will ensure that construction contractors implement BMPs, along with the planting or re-

seeding disturbed areas using native plant species to assist in the re-establishment of native vegetation as described under Mitigation for Refined Alternative 4 Vegetation Impact 5 in Section 3.4. Where feasible, directional borings will be used for river pipeline crossings.

Reclamation will compensate the loss of approximately 1,645 acres of upland vegetation resulting from the construction of the Ridges Basin Reservoir, the Durango Pumping Plant, and other features as described under Mitigation for Refined Alternative 4 Vegetation Impacts 1 and 2 in Section 3.4 as part of the wildlife mitigation plan. The compensation will be part of the total estimated 2,700-2,900 acres of wildlife habitat to be acquired and enhanced to compensate the loss of wildlife habitat in Ridges Basin. The mitigation land acquisition will be completed prior to initiation of ground-breaking construction activities at the reservoir and pumping plant sites. Reclamation will attempt to acquire large contiguous acreage and will attempt to acquire these lands first in the river basins that will be affected by the ALP Project, and then outside of those basins, with the final decision made in consultation with state and federal wildlife agencies.

Reclamation will compensate the loss of 134 acres of wetland/riparian habitat at a mitigation ratio sufficient to replace or exceed the habitat value of wetland/riparian habitat lost as described under Mitigation for Refined Alternative 4 Vegetation Impacts 3 and 4 in Section 3.4. Reclamation will replace lost wetland/riparian areas at a planned ratio of 1.5:1, thus creating approximately 200 acres of replacement wetlands. Mitigation will involve a program of land acquisition, wetland development, and long-term management. To the extent possible, this program will be integrated into the wildlife habitat mitigation program to expand benefits and provide large blocks of contiguous wildlife habitat. For purposes of this FSEIS, it is assumed 600 acres will be necessary for the wetland program. Because of limited water supplies for new wetland creation in the region, restoration of degraded wetlands will be an important component of any wetland plan. As with wildlife habitat mitigation, the La Plata River Basin will be given first priority for wetland development. Lands for wetland mitigation will be acquired prior to initiation of construction of Ridges Basin Dam and overall wetland mitigation physical features will be at least 95 percent completed prior to beginning reservoir filling.

Reclamation will also monitor the Animas River riparian corridor to help determine any effects of the pumping regime on these downstream resources. The monitoring will also include Basin Creek wetlands. Reclamation will also limit ground disturbing activities due to construction of the NNMP and other pipelines and will replace in a 2:1 ratio, riparian trees (cottonwoods) lost due to construction.

Reclamation will require that development of non-binding end uses avoids or minimizes construction impacts to wetland and riparian vegetation located within corridor alignments of the non-binding water conveyance pipelines. Reclamation will require that construction zones be kept to the minimum size needed to meet project objectives. If avoidance is not possible, a riparian/wetland mitigation and monitoring plan will be developed to compensate for the loss of vegetation cover as described under Mitigation for Refined Alternative 4 Vegetation Impact 8 in Section 3.4.

5.4.5 Wildlife Commitments

Reclamation will mitigate the direct and indirect loss of approximately 2,700-2,900 acres of wildlife habitat through the purchase, enhancement, and management of approximately 2,700-2,900 acres of suitable land as described under Mitigation for Refined Alternative 4 Wildlife Impact 1 in Section 3.5. The actual amount of land that will be acquired to obtain this level of mitigation will depend on the potential wildlife value of the lands acquired. All reasonable attempts will be made to acquire interests in lands on a willing seller basis, using fee simple purchases, conservation easements, purchase options,

or life estates, to name a few. However, this does not preclude the use of other authorities available to acquire such land interests. Priority will be given to lands in the La Plata River drainage, as well as in the vicinity of Ridges Basin, to provide replacement habitat for displaced deer, elk, and other wildlife that utilize Ridges Basin and adjacent areas that will be affected. Large, contiguous parcels will be given priority to create unfragmented habitat and to facilitate management. Lands will be managed for wildlife and other uses will not be allowed if it is determined that they will interfere with the wildlife habitat benefits. Acquisition, enhancement, and management plans will be coordinated with the U.S. Fish and Wildlife Service (Service), Colorado Division of Wildlife (CDOW), and possibly the Southern Ute Indian Tribe. Because of the preference to acquire interests in lands on a willing seller basis, it is recognized that the specific parcel location is difficult to establish at this time. If La Plata or Ridges Basin areas are unavailable, lands in other areas of the San Juan River Basin will be sought. Based on similar past programs, it will be feasible to acquire the lands; however, it should be noted that they may not be in the immediate project impact area. Wildlife mitigation land will be acquired prior to award of the contract for construction of Ridges Basin Dam, and development will occur concurrently with the construction of the dam.

Reclamation will develop construction specifications to include noise, traffic, and human use restrictions to minimize disturbance to wildlife near the construction zone of Ridges Basin as described under Mitigation for Refined Alternative 4 Wildlife Impact 2 in Section 3.5. The Carbon Mountain gas pipeline route, which could significantly impact golden eagle nesting, will not be considered. Reclamation will make efforts to avoid construction during the May-July period in the vicinity of elk calving areas to minimize impacts to elk.

Reclamation will ensure that recreational facilities and the new alignment for County Road (CR) 211 are sited or restricted in such a way to minimize the disruption of deer and elk habitat utilization and behavior as described under Mitigation for Refined Alternative 4 Wildlife Impact 3 in Section 3.5. Designs of road crossings, particularly in the vicinity of Wildcat Creek, will contain special provisions to minimize wetland/riparian resources as described in Section 3.4, Mitigation for Refined Alternative 4 Impacts 1 and 2. Habitat impacts discussed previously include indirect impacts. Indirect impacts will be managed through a plan that will support the minimization or elimination of those conflicts/impacts. Recreation facilities will not be permitted on the west or south sides of the reservoir to reduce impacts to big game migration corridors. Trails will be restricted to foot traffic. Wildlife-related activities will be encouraged. Future use of Reclamation lands for cabin sites or similar uses will not be allowed. Sufficient land will be acquired at the time reservoir right-of-way is acquired at the upper (western) end of the reservoir (at least one-quarter mile) and along the southern shore to maintain a wildlife migration corridor around the reservoir and to winter ranges to the south.

Reclamation will collaborate with raptor specialists from the Service and CDOW on road realignment and construction activities at Ridges Basin Dam to identify and implement measures minimizing effects on existing golden eagles and their nests on Carbon Mountain as described under Mitigation for Refined Alternative 4 Wildlife Impact 4. All reasonable means to preclude human activity on Carbon Mountain will be pursued. All power lines will be designed raptor-proof.

Reclamation will require that a 0.25-mile buffer around the existing golden eagle nests be identified and that all reasonable measures are pursued to preclude human activity on Carbon Mountain during the nesting period of golden eagles (December 1 through July 15), as described under Mitigation for Refined Alternative 4 Wildlife Impact 5 in Section 3.5.

Reclamation will ensure that development of non-binding end uses and conveyance systems avoid or minimize construction impacts to wetland and riparian vegetation wildlife habitat located within the potential corridor alignments of the non-binding water conveyance pipelines and that construction zones are the minimum necessary to meet project objectives as described under Mitigation for Refined Alternative 4 Wildlife Impact 7 in Section 3.5. If avoidance is not possible, Reclamation will require that a riparian/wetland habitat mitigation and a monitoring plan is developed to compensate for the loss of habitat value.

5.4.6 Aquatic Resources Commitments

The Service recommended that water pumped to Ridges Basin Reservoir from the Animas River be delivered into the reservoir at an elevation below the thermocline. This could lessen the likelihood of periodically having reservoir water temperatures becoming too warm to support trout and could increase oxygen levels in the reservoir. Reclamation does not believe there is sufficient information to adopt this measure at this time. Reclamation will, therefore, fund a more further detailed evaluation of Ridges Basin Reservoir's expected limnological conditions to better determine whether or not there is a significant concern to include this recommendation in the project plan. This commitment is described under Mitigation for Refined Alternative 4 Aquatic Resources Impact 2 in Section 3.6. The evaluation will be completed in coordination with the Service as part of the design data collection activities.

Reclamation will develop and implement a monitoring program at Ridges Basin Reservoir to determine the extent of bioaccumulation of trace elements in fish within the reservoir. The reservoir basin's vegetation will be largely cleared in order to reduce the magnitude of productivity and reduction potential. This, in turn, will limit mercury becoming methylated, the form in which it is available to bioaccumulate within the food chain. Trout will be the only fish stocked. Trout are not at the top of the fish food chain; therefore, they will not be expected to accumulate significant levels of bioaccumulated trace elements. The program will last two consecutive years and be initiated two years after the reservoir is filled. If significant bioaccumulation effects are identified, Reclamation will work with the appropriate local, state or federal agencies to either minimize the impact or otherwise offer protection to potentially impacted fish and wildlife species and to possibly post human fish consumption advisories at the reservoir. This commitment is also described under mitigation for Refined Alternative 4 Aquatic Resources Impact 3 in Section 3.6

To minimize downstream stranding of fish due to the operation of the pumping plant, changes in the pumping will be staged in the following manner: An increase in pumping not to exceed 50 cfs per hour (hr) stage decrease and a decrease in pumping not to exceed 100 cfs/hr (stage increase) when natural river flows are above 500 cfs. At lower flow, these ramping rates could substantially change river stage. Therefore, when river flows are at or below 500 cfs, increases in pumping will not exceed 25 cfs/hr and decreases in pumping will not exceed 50 cfs/hr. This commitment is also described under Mitigation for Refined Alternative 4 Aquatic Resources Impact 6 in Section 3.6. Seasonal bypass flows will be met (ranging from 125 - 225 cfs) as described under mitigation for Refined Alternative 4 Aquatic Resources Impact 1.

Monitoring studies of project-affected waters on the Animas River will be implemented both prior to and continuing for at least four years after project operations begin (project pumping). These studies will be designed to better define the native fishery, to include better understanding apparent problems with native sucker recruitment, and to monitor trout populations. If it is concluded that the operation of the project is having significant adverse impacts to the downstream aquatic ecosystem, Reclamation will make every reasonable effort to modify project operations to either reduce or eliminate these impacts.

The potential impact to native fishes in the Animas River, especially the effects of chronic habitat reduction, may not be directly mitigatable on the Animas River. Investigations should be initiated to determine whether or not fish barriers exist, whether small fish/young-of-the-year fish are significantly lost through entrainment in canals, and whether any significant loss to the trout fishery occurs. The monitoring program will be initiated in 2000 that will incorporate these additional elements into a monitoring study currently being conducted on the Animas River. A firm recommendation for mitigation due to the effects on native fishes will be made by no later than 2005, at least two years prior to project pumping from the Animas River. Once this mitigation recommendation is approved and agreed to by the Service, CDOW, New Mexico Department of Game and Fish (NMDGF), and perhaps the Southern Ute Indian Tribe, its implementation will immediately begin. This commitment is also described under mitigation for Refined Alternative 4 Aquatic Resources Impact 4 in Section 4.6.

Reclamation will review and adopt established guidelines for screening facilities to minimize fish entrainment and impingement at the Ridges Basin Pumping Plant. Reclamation will also ensure that design specifications include Best Available Technologies as described under Mitigation for Refined Alternative 4 Aquatic Resources Impact 5 in Section 3.6.

Reclamation will either screen or implement other physical structures to prevent live fish from being released from Ridges Basin Reservoir. The reservoir outlet system will be designed and fitted with devices to eliminate survival of fish escaping the reservoir. Reclamation will monitor escapement from the reservoir and Basin Creek as described under mitigation for Refined Alternative 4 Aquatic Resources Impact 7 in Section 3.6.

Reclamation will fund the acquisition and stocking of wild strains of trout annually in the Animas River within the boundaries of the Southern Ute Indian Reservation to compensate for fish loss due to the reduction in usable trout habitat. Individual stocks of trout will be marked in such a manner that age groups could be monitored over time. This monitoring plan will be developed in consultation with the Service, CDOW, NMDGF, and the Tribe. The relative success of this effort will be assessed after four years. If it is deemed a success—that is, if the trout biomass within the stocked reaches of the river is elevated to a point of supporting a recreational fishery—the stocking program will continue. For the acquisition of trout stock, Reclamation will consider the development of a new hatchery in cooperation with the Southern Ute Indian Tribe and others. This same hatchery could very well be utilized for providing for fish stocking for Ridges Basin Reservoir.

Reclamation will commit to providing trout to be stocked at Ridges Basin Reservoir to provide a recreational fishery. The source of fish could be from an existing Colorado River Storage Project (CRSP) hatchery facility or from the acquisition and/or construction of a new hatchery facility. This commitment is for the purposes of enhancing the fishery at Ridges Basin Reservoir.

As described in Section 5.4.11, Reclamation will acquire at least two new public access points on the Animas River for fishing and other recreational use.

5.4.7 Special Status Species Commitments

Reclamation will implement conservation measures found in the latest Biological Opinion on the project (see Attachment G for complete list). These measures address the Colorado pikeminnow and razorback sucker that are found in the San Juan River and the bald eagle that is found throughout the project area.

The conservation measures include Reclamation's commitment to operate Navajo Reservoir and the Durango Pumping Plant to mimic the natural hydrograph of the San Juan River to benefit the endangered fish and their habitat. Also, Ridges Basin outlet facilities will be designed to prevent escapement of nonnative fish, that might compete with native fish, into the Animas or other area waterways.

Reclamation will develop and implement a monitoring program for potential adverse bioaccumulation of trace elements in bald eagle food items in Ridges Basin Reservoir. If the program identifies a problem with trace elements, Reclamation will develop and implement an action plan to minimize impacts to bald eagles. Bypass flows compatible with the endangered fish recovery efforts will be incorporated into the project plan to promote natural recruitment of cottonwood trees. This should avoid impacts to future bald eagle habitat. Also, electrical transmission lines associated with the project will be designed to avoid injury to raptors, including bald eagles.

Project wildlife and wetland mitigation areas should provide high quality, protected habitats for species such as the southwestern willow flycatcher and bald eagle in the area.

5.4.8 Geology and Soils Commitments

Reclamation will reduce or eliminate the potential for earthquake damage to the Ridges Basin Dam site through specific design specifications. Dam specifications will require design performance to withstand a maximum credible earthquake for seismic sources in the vicinity of Ridges Basin Dam site as described under Mitigation for Refined Alternative 4 Geology Impact 1 in Section 3.8.

Reclamation will develop and implement a controlled program for filling Ridges Basin Reservoir to reduce the potential for induced seismic impacts as described under Mitigation for Refined Alternative 4 Geology Impact 2 in Section 3.8.

Reclamation will develop and implement a facilities operation program that includes monitoring the reservoir shoreline and slopes for landslide and slumping. Reclamation will also provide for public notification and control public access in areas where high landslide and slumping potential exists as described under Mitigation for Refined Alternative 4 Geology Impact 3 in Section 3.8.

Reclamation will develop an engineered process plan to limit, control, and manage dam site methane gas releases during construction. Reclamation will also monitor the area for methane gas releases during operations as described under Mitigation for Refined Alternative 4 Geology Impact 4 in Section 3.8.

Reclamation will investigate the potential of gas release due to man-made intrusions within Ridges Basin and the proposed dam site. Specifically, construction investigations will study the integrity of abandoned exploration wells and the Gates Coal Mine as described under Mitigation for Refined Alternative 4 Geology Impact 5 in Section 3.8.

Reclamation will mandate that construction contractors use and implement measures contained in erosion control guidelines and BMPs to control soil erosion from construction areas as described under Mitigation for Refined Alternative 4 Soils Impact 1 in Section 3.8.

Reclamation will develop and implement a program to control reservoir filling and drawdown at rates sufficient to reduce significant erosion and sedimentation potential as described under Mitigation for Refined Alternative 4 Soils Impact 2 in Section 3.8.

5.4.9 Cultural and Paleontologic Resources Commitments

Reclamation will ensure compliance with historic/archaeological treatment measures and disseminate results pursuant to the Programmatic Agreement executed to meet Section 106 requirements for Refined Alternative 4 Cultural Impacts 1-3 in Section 3.9. Attachment H contains a Draft Amended Programmatic Agreement for the ALP Project. Reclamation will also finalize a Historic Preservation Management Plan which puts the Programmatic Agreement into operation.

Reclamation will ensure compliance with mitigation measures developed in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA) and Executive Order 13007 as described under Mitigation for Refined Alternative 4 Cultural Impact 4 in Section 3.9. Appendix H contains a draft NAGPRA Plan for the ALP Project.

Reclamation will ensure that areas to be disturbed are field surveyed prior to construction disturbance and will ensure that construction monitoring is conducted where deemed appropriate as described under Mitigation for Refined Alternative 4 Paleontologic Impact 1 in Section 3.9.

Reclamation will ensure that periodic shoreline monitoring is conducted as part of the facilities operations plan as described under Mitigation for Refined Alternative 4 Paleontologic Impact 2 in Section 3.9.

5.4.10 Agriculture Commitments

Location, design, and construction timing of the NNMP would protect agricultural lands as described under Mitigation for Refined Alternative 4 Agriculture Impact 2 in Section 3.10.

5.4.11 Recreation Commitments

Reclamation will pursue pumping regimes that reduce adverse flow effects on boating opportunities within the Animas River when possible and will take steps to improve public access to the river as described under Mitigation for Refined Alternative 4 Recreation Impacts 1 and 2 in Section 3.11.

Reclamation will alter pumping regimes during periods of competitive events as described under Mitigation for Refined Alternative 4 Impact 3 in Section 3.11.

Reclamation, as part of both the fishery and recreation mitigation program, will acquire or provide funding (not to exceed $500,000) for the acquisition of public access at a minimum of two points on the Animas River between the High Bridge and Basin Creek to reduce effects to anglers on the Animas River as described under Mitigation for Refined Alternative 4 Recreation Impact 4 in Section 3.11.

5.4.12 Socioeconomics Commitments

No environmental commitments are made for socioeconomic resources.

5.4.13 Land Use Commitments

No environmental commitments are made for land use resources.

5.4.14 Hazardous Materials Commitments

Reclamation will ensure that the Durango Pumping Plant is designed to minimize the disturbance of contaminated materials. Reclamation will also ensure that procedures will be developed for radiological monitoring of excavated soils and groundwater encountered and that remedial procedures are planned in advance to counteract the potential for human exposure and for the prevention of contaminated groundwater release from the construction site as described under Mitigation for Refined Alternative 4 Hazardous Materials Impact 1 in Section 3.14.

Reclamation will ensure that all federal and state requirements pertaining to the management and handling of hazardous materials, mixed wastes and radioactive waste are followed and will include those requirements within construction contract language inclusive of construction safety and environmental compliance as described under mitigation for Refined Alternative 4 Hazardous Materials Impact 2 in Section 3.14.

Reclamation will require that construction specifications for Ridges Basin Dam and Reservoir, the Ridges Basin Inlet Conduit, road relocation, and related work prohibit contractors from disturbing the disposal cell. Reclamation will take steps to ensure that the disposal cell has appropriate signage to make the public aware of its presence and any personal hazards that it could present, as described under Mitigation for Refined Alternative 4 Hazardous Materials Impact 3 in Section 3.14.

Reclamation will confer with DOE and their Long-Term Surveillance and Maintenance Program to understand the current operational scheme and parameters for the Bodo Canyon disposal cell. As well, Reclamation will reactivate sampling and monitoring of wells DH-228 and DH-229 for indicator parameters including but not limited to Molybdenum, Selenium, and Uranium, as described under Mitigation for Refined Alternative 4 Hazardous Materials Impact 5 in Section 3.14.

Reclamation will require that preconstruction surveys are conducted for non-binding water end use facilities and conveyance system development and that hazardous material standards relating to construction are adhered to as described under Mitigation for Refined Alternative 4 Hazardous Materials Impact 6 in Section 3.14.

5.4.15 Transportation Commitments

Reclamation will conduct a transportation survey prior to construction of Ridges Basin Dam and Reservoir and will implement methods to reduce traffic-related impacts as described under Mitigation for Refined Alternative 4 Transportation Impacts 1 and 2 in Section 3.15.

Reclamation will ensure to maintain CR 211 roadway, shoulder, drainage, and roadside to standards adequate to avoid noticeable degradation as described under Mitigation for Refined Alternative 4 Transportation Impact 3 in Section 3.15.

Reclamation will require third-party developers of recreation facilities at Ridges Basin Reservoir to conduct traffic engineering impacts analysis studies and to mitigate recreation facility impacts according

to state and county standards. Associated costs will be the responsibility of the developing entity as described under Mitigation for Refined Alternative 4 Transportation Impact 7 in Section 3.15.

5.4.16 Air Quality Commitments

Reclamation will require that construction contractors implement measures to control fugitive dust and exhaust emissions during construction as described under Mitigation for Refined Alternative 4 Air Quality Impact 1 in Section 3.16.

Reclamation, or other responsible federal agency, will require third-party developers to implement measures to control fugitive dust and other emissions during construction and operation of non-binding end uses.

5.4.17 Noise Commitments

Reclamation will require that the Durango Pumping Plant construction contractor restrict operation of heavy equipment during the nighttime hours as described under Mitigation for Refined Alternative 4 Noise Impact 1 in Section 3.17.

Reclamation will ensure that construction contractors provide blasting notification to residents, sound pre-blast alarms, and follow the construction safety plan as described under Mitigation for Refined Alternative 4 Noise Impact 2 in Section 3.17.

Construction and operation of the Durango Pumping Plant will be carried out to reduce noise impacts as described under Mitigation for Refined Alternative 4 Noise Impacts 3 and 4 in Section 3.17.4.1. Noise reduction will be provided in the form of sound insulation within the pumping plant and vegetation screening designed as part of site landscaping. Ridges Basin specifications will provide for noise control, particularly relating to golden eagle nesting.

Reclamation will ensure that construction contractors schedule construction activities to avoid or minimize loud activities in the vicinity of golden eagle nesting areas during the nesting season and that nesting areas are "off limits" to construction forces and visitors as described under Mitigation for Refined Alternative 4 Noise Impact 4 in Section 3.17.

Reclamation will require that third-party developers of recreation facilities at Ridges Basin Reservoir incorporate in a recreation development/management plan the requirement to prohibit particularly loud forms of watercraft and to include signing to advise people of eagle nesting sensitivity to human presence and noise as described under Mitigation for Refined Alternative 4 Noise Impact 5 in Section 3.17.

Reclamation will ensure that developers and contractors associated with construction and operation of the non-binding end uses incorporate methods to minimize noise disturbances as described under Mitigation for Refined Alternative 4 Noise Impact 6 in Section 3.17.

5.4.18 Public Health and Safety Commitments

Reclamation will ensure that public access to structural component construction areas will be controlled by signage and by fencing around construction areas as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 1 in Section 3.18.

Reclamation will ensure that contractors configure haul routes and access roads to prevent or discourage public vehicular entry, including placement of signs warning against entry as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 2 in Section 3.18.

Reclamation will ensure that all the potentially affected gas companies will be contacted prior to construction crossings of gas pipelines which will be precisely located and appropriately marked in the field and on the specifications as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 3 in Section 3.18.

Reclamation will ensure that public access to end use and delivery system construction areas is controlled by signage and by fencing around construction areas as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 4 in Section 3.18.

Reclamation will investigate the potential for gas release due to man-made intrusions, prior to construction, and will monitor excavations for the presence of coal bed methane gas, as described under Mitigation for Refined Alternative 4, Public Health and Safety Impact 5 in Section 3.18.

Reclamation will control public access to operation areas that could pose a threat to public safety as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 6.

Reclamation will ensure that recreation area planning, final design of facilities, and reservoir access points are developed to promote safety and use of accident management techniques as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 7 in Section 3.18.

5.4.19 Public Services and Utilities Commitments

Reclamation will ensure that construction contractors adequately secure and patrol their work sites and will coordinate with city or county law enforcement agencies as described under Mitigation for Refined Alternative 4 Public Services and Utilities Impact 1 in Section 3.19.

Reclamation will ensure that contractors will mark the locations of existing buried utilities and develop a notification system for coordination with affected utilities during construction as described under Mitigation for Refined Alternative 4 Public Services Utilities Impact 4 in Section 3.19.

5.4.20 Visual Resources Commitments

Reclamation will ensure that as part of construction design, the Durango Pumping Plant blends into the natural landform and that, following construction, the site is adequately revegetated as described under Mitigation for Refined Alternative 4 Visual Impact 1 in Section 3.20.

Reclamation will ensure that the design of structural facilities incorporates, to the extent practicable, non-intrusive design elements and that restoration of disturbed areas be conducted as described under Mitigation for Refined Alternative 4 Visual Impact 2 in Section 3.20.

5.4.21 Indian Trust Assets and Environmental Justice Commitments

Interior will support the modification of the Settlement Agreement, through legislated amendments to the Settlement Act, to recognize the new limits placed on the use and amount of water provided to the Colorado Ute Tribes and establishment of the water acquisition fund.

Interior will pursue the development of operation plans for Ridges Basin and Navajo Reservoirs that will optimize more efficient delivery of the flow recommendations for endangered fish in the San Juan River and limit certain project pumping to allow for making additional depletions and developable water available for other Indian tribes' present and future water needs.

Interior will facilitate discussions between the Jicarilla Apache Tribe and other parties with interest in the San Juan River Basin to develop options of obtaining 25,500 afy depletion as authorized under the Jicarilla Apache Tribe Water Rights Settlement Act.

EXHIBIT B

Methodology Regarding Implementation of Section 207 on Up-Front Cost-Sharing and Repayment, Animas-La Plata Project (August 2, 2006), as amended

United States Department of the Interior
BUREAU OF RECLAMATION
ANIMAS-LA PLATA CONSTRUCTION OFFICE
P.O. BOX 5107
103 Everett Street
Durango, CO 81301

TAKE PRIDE IN AMERICA

AUG - 2 2006

ALP-100
FIN-6.20

Mr. Randy Seaholm
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, CO 80203

Subject: Memorandum Regarding Section 207 Up-Front Cost-Sharing and Repayment Methodology – Animas-La Plata Project, Colorado and New Mexico

Dear Mr. Seaholm

Enclosed for your records is a copy of the final signed subject memorandum. The enclosed memorandum acknowledges consultation occurred and allows the Bureau of Reclamation to begin implementation of the accounting and methodology described in the memorandum.

We appreciate all of your efforts in achieving this goal.

If you should have any questions, please do not hesitate to contact me at 970-259-1110, ext. 1004.

Sincerely,

Rick Ehat, Project Construction Engineer
Animas-La Plata Construction Office

Enclosure

Identical Letter Sent To:

Mr. Dan Law, Executive Director
Colorado Water Resources and
Power Development Authority
1580 Logan Street, Suite 620
Denver, CO 80203

Mr. Randy Kirkpatrick
Executive Director
San Juan Water Commission
1450 East Main
Farmington, NM 87402

Continue on Next Page.

Continue from Previous Page.

Ms. Stella Montoya, President
La Plata Conservancy District, New Mexico
1592 Hwy 172
La Plata, NM 87418
(w/encl to ea)

bc: UC-100 (Gold), UC-446 (Loring), UC-300, 84-27700, WCG-DeAngelis, WCD-PSchumacher, ALP-250, ALP-251, ALP-252
(w/encl to ea)

WCD-PPage
(w/original memo)

WBR:REhat:BFox:08/01/06
L:Common/rehat/Ltr trans signed agrmt

United States Department of the Interior
BUREAU OF RECLAMATION
Upper Colorado Region
Western Colorado Area Office

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835 E 2nd Avenue, Suite 300
Durango CO 81301-5475

ALP-100
WCG-CDeAngelis
WTR-4.00

JUN - 7 2006

MEMORANDUM

To: Contractors/Potential Repayment Sponsors

From: Rick Ehat, Animas LaPlata
Carol DeAngelis, Western Colorado Area Office Manager

Subject: Methodology Regarding Implementation of Section 207 on Up-Front Cost-Sharing and Repayment, Animas-La Plata Project

A. Background. The passage of Section 207 of P.L. 108-447, as amended, affects up-front cost-sharing and repayment of the Project. The statute provides:

Sec. 207. Animas-La Plata Non-Indian Sponsor Obligations. In accordance with the nontribal repayment obligation specified in Subsection 6(a)(3)(B) of the Colorado Ute Indian Rights Settlement Act of 1988 (Public Law 100-585), as amended by the Colorado Ute Settlement Act Amendments of 2000 (Public Law 106-554), the reimbursable cost upon which the cost allocation shall be based shall not exceed $43,000,000, plus interest during construction for those parties not utilizing the up front payment option, of the first $500,000,000 (January 2003 price level) of the total project costs. Consequently, the Secretary may forgive the obligation of the non-Indian sponsors relative to the $163,000,000 increase, and any effects in inflation thereon, in estimated total project costs that occurred in 2003.

This document is to record and acknowledge certain decisions made by the Bureau of Reclamation regarding implementation of the provision cited above after consultation with all Project sponsors, including the Tribes.

B. Implementation Methodology.

1. Cost Allocation Method: The current contracts are based on the 2001 Interim Cost Allocation Method. This method will continue to be used for allocating costs.

2. Specific Costs and the Reimbursement Cap: The statutory language provides that the reimbursable costs shall not exceed $43 million for the first $500 million of total project costs, thereby establishing a reimbursement cap that covers both specific costs and joint costs. Therefore, the reimbursable specific costs for the City of Durango shall

be subtracted from the $43 million reimbursement cap before the remainder is distributed among the sponsors paying the joint reimbursable costs.

3. Quarterly Billing Method: Reclamation has developed a "Cap Conversion Factor" to be applied to post-1999 actual joint cost expenditures to adjust escrow draws in accordance with the reimbursement cap. The current Cap Conversion Factor and its application to post-'99 joint cost expenditures are set forth on Attachment 1 and 4 hereto. The methodology discussed in this paper, and the computed Cap Conversion Factor, are applicable until the actual joint cost expenditures exceed $346,399,000, (the total joint costs included in the $500,000,000 Project Cost estimate from July, 2003). Once actual joint cost expenditures exceed $346,399,000, an adjusted Cap Conversion Factor will be developed as discussed in Section C.3.

4. Quarterly billings through December 2004 reflected the allocable percentages for each sponsor as applied to the reimbursable portion of the $500 million cost estimate. As a result of the passage of the Section 207 language in December 2004, subsequent quarterly billings have been adjusted to reflect the $43 million reimbursement cap and all previous payments. Previous payments in excess of the required amount as recalculated pursuant to Section 207 were applied as credits to future quarterly billings for allocable reimbursable costs, joint and specific, until the allocable reimbursable costs, joint and specific, required additional payments by the sponsors.

C. Other.

1. Estimate of Inflated Reimbursement Cap. The language of Section 207 in effect provides that repayment will not be required for $163 million in cost increases (and on the effects of inflation thereon) included in the $500 million total Project Cost estimated by Reclamation in July 2003 based on January 2003 price levels. It is Reclamation's position that, since the original project costs were subject to inflation, the $43 million reimbursement cap is also subject to inflation. A simple ratio and proportion method will be used to estimate the effect of inflation on the reimbursement cap, as set forth in Attachment 2.

2. Project Cost Projection for Escrow Planning. In order to assist contractors in projecting overall project costs for escrow planning, a process was presented to the sponsors during an August 29, 2005 meeting. A synopsis of that process is described in Attachment 3.

3. Adjustment of Cap Conversion Factor. At such time as the actual joint cost expenditures exceed $346,399,000, (the estimated total joint costs included in the $500,000,000 Project Cost estimate from July 2003), Reclamation will develop an adjusted Cap Conversion Factor to reflect the Inflated Reimbursement Cap. At that time, the remaining reimbursable costs to be recovered, due to the effects of inflation, will be calculated. Adjustments to the remaining reimbursable costs due to inflation on the estimated City of Durango specific costs will be considered in this calculation. A revised Cap Conversion Factor will be developed as a ratio of the calculated remaining

reimbursable costs to be recovered under Section 207 to the calculated remaining reimbursable costs without the effect of Section 207. The Cap Conversion Factor will be reviewed each year as indexed project cost estimates are released.

4. Final Cost Allocation and Determination of Reasonable and Unforeseen Costs. The language of the Colorado Ute Settlement Act Amendments of 2000 addressing final cost allocation, relinquishment of water, and reasonable and unforeseen costs, remains unchanged and unaffected by Section 207 or its implementation as set forth herein. The statute is in full effect and reads as follows:

Section 302(a)(3)(B). The nontribal repayment obligation set forth in subparagraph (a) shall be subject to a final cost allocation by the Secretary upon project completion. In the event that the final cost allocation indicated that additional repayment is warranted based on the applicable entity's share of project water storage and determination of overall reimbursable cost, that entity may elect to enter into a new agreement to make additional payment necessary to secure the full water supply identified in paragraph (1)(A)(ii). If the repayment entity elects not to enter into a new agreement, the portion of project storage relinquished by such election shall be available to other project purposes. Additional repayment shall only be warranted for reasonable and unforeseen costs associated with project construction as determined by the Secretary in consultation with the relevant repayment entities.

The non-federal entities acknowledge that: 1) Reclamation has consulted with them regarding the substance of this memorandum, 2) Reclamation will implement the accounting and cost methodologies in this memorandum, and 3) without waiving any of their rights under statute or their repayment contracts, they will not object to Reclamation proceeding in accordance with this memorandum.

This memo is not intended and does not constitute a contract between the Bureau of Reclamation and any entity that currently has a repayment contract, and does not change any term in existing contracts between the Secretary and project sponsors. Project sponsors expressly reserve the right to review and challenge the methods presented in the memorandum to the extent they conflict with repayment contracts or other authority.

Colorado Water Resources and
Power Development Authority

San Juan Water Commission

State of Colorado

La Plata Conservancy District

Attachments

Attachment 1
Discussion on Development of Cap Conversion Factor

A simplified approach to accounting for the effect of Section 207 on Escrow Agreement interim quarterly payments was presented to the two contractors that hold repayment contracts. A draft worksheet (Attachment 4) provided proposes a method of applying the intent of Section 207 to actual joint cost expenditures for use in the quarterly billing process. The methodology applies a ratio, or cap conversion factor, to post-1999 actual joint cost expenditures to reflect the cap on repayment liability established in Section 207. The use of the ratio is intended to meet the requirement of Section 207 for the reimbursable costs not to exceed $43,000,000 for the first $500,000,000 of the total project costs. To simplify the administration of the escrow account, the cap conversion factor is applied to all joint costs incurred from 1999 to the present. This results in a difference between the amount actually paid to date by contractors and the amount due as a result of Section 207. It is Reclamation's position that this difference is not an overpayment, as the amounts paid to date were billed and paid in accordance with the applicable agreements and law at the time the payments were made.

Attachment 2

Method to Estimate the Inflated Reimbursement Cap

PURPOSE:

To outline a method for estimating the potential overall project cost and repayment in order to facilitate administration of escrow accounts and payments under the up-front cost-share agreements. Actual repayment will be based on the final cost allocation, after application of applicable tests.

SECTION 207 LANGUAGE, AS AMENDED:

Section 207 limits the non-tribal repayment obligation to $43 million for the $500 million project (10/03 prices). The language, as amended, results in:

- No repayment of the $163 million of cost increases
- No repayment of the effects of inflation on the $163 million of cost increases
- Implies repayment on the effects of inflation on the $337 million ($500 million - $163 million), which implies some inflation of the reimbursement cap.

METHOD:

A simple method of calculating repayment of the current indexed project ($522 million @ 10/05 prices) is:

$$\frac{\text{\$43 million (Original Reimbursement Cap)}}{\text{\$500 million (CCE @ 10/03)}} = \frac{\text{Inflated Reimbursement Cap @ 10/05}}{\text{\$522 million @10/05}}$$

Inflated Reimbursement Cap @ 10/05 prices = $44, 892,000

Attachment 3

Process for Projecting Project Costs for Escrow Planning

The process involves projecting indexed project costs using a worksheet that shows actual project costs through the end of the current fiscal year, and projected costs (indexed) in future years. In order to project overall costs, one would assume construction indices, appropriations and a schedule for construction contracts in each of the future years. The accuracy of these assumptions and other factors could affect the accuracy of the overall cost projection. Reclamation has offered to help the contractors develop this worksheet every February after the President's budget for the following fiscal years is revealed. The resulting worksheet would be a contractor product, not a Reclamation product.

Using the worksheet described above, a contractor can then use a separate worksheet to allocate the projected costs among sponsors using the 2001 Interim Cost Allocation Method, with the reimbursable cost limited by the $43 million reimbursement cap and subject to inflation on the $337 million ($500 million- $163 million). Using the method of ratio and proportion in Attachment 2, the contractor can determine the inflated reimbursement cap, and then estimate the reimbursable cost to each entity based on the assumptions made. This will allow the contractor to plan for escrow needs.

United States Department of the Interior

BUREAU OF RECLAMATION
Upper Colorado Regional Office
Western Colorado Area Office

TAKE PRIDE IN AMERICA

IN REPLY REFER TO

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Durango, CO 81301-5475

WCD-RRandol
FIN-6.20

Mr. Dan Law
Executive Director
Colorado Water Resources and Power
Development Authority
1580 Logan Street, Suite 620
Denver, CO 80203

Subject: Modification to the Methodology to Estimate the Inflated Reimbursement Cap, Section 207 of P.L. 108-447, as Amended, Animas-La Plata Project, Colorado and New Mexico

Dear Mr. Law:

The purpose of this letter is to consult with you regarding a change necessary in the methodology to calculate the Inflated Reimbursement Cap (IRC) for the Animas-La Plata Project (Project). The original methodology was described in a memorandum to existing and potential Project repayment sponsors, dated June 7, 2006 (see attached table for example of the original methodology). This proposed change in methodology was discussed at the March 20, 2008 Project Construction Committee (PCC) meeting and those attending requested a letter from Reclamation describing the change.

We have recently determined that when the IRC was updated to reflect the latest cost indexing of the Construction Cost Estimate (CCE), the increase was proportionally greater than increases in the joint Project costs. This has the effect of artificially over-inflating the reimbursable cap. This disproportionate increase can be attributed to the inclusion of the following three items in the amount to be inflated:

1) The pre-1999 sunk costs have been expended and, as such, are not subject to indexing;

2) Calculation of the Colorado Water Resources and Power Development Authority (CWRPDA) indexed specific costs is conducted separately, as these costs are not distributed among the Project sponsors; and

3) The costs associated with the Navajo Nation Municipal Pipeline (NNMP) are specific to the Navajo Nation and do not impact the reimbursable joint costs. These costs have not been expended and as such, are being indexed in their entirety. The effect of indexing on this substantial portion of Project costs resulted in further disproportionate increase in the IRC.

In order to ensure that the method used for inflating the reimbursable cap best reflects the increases in joint construction costs due to inflation, an alternative method for calculation of the IRC was developed.

The modified method of calculating the IRC (see attached table) is as follows:

To calculate an appropriate indexing percentage -

- The non-Indian reimbursable baseline of $43,000,000, which was established by Section 207 of P.L. 108-447, is reduced by the amount of the non-Indian pre-1999 sunk costs and the CWRPDA specific costs (from the Interim Cost Allocation (ICA) for the January 2003 CCE) to establish a baseline amount to be indexed.
- The non-Indian reimbursable costs from the ICA for the January 2003 CCE are reduced by the CWRPDA specific costs and the pre-1999 sunk costs.
- The baseline amount to be indexed is divided by the adjusted non-Indian reimbursable costs to establish an indexing percentage.

To apply the indexing percentage to updated costs –

- The FY2009 Interim Cost Allocation non-Indian reimbursable total is reduced by the FY2009 CWRPDA specific costs and the pre-1999 sunk costs.
- The result is multiplied by the indexing percentage to obtain an inflated baseline.
- The total of the non-Indian pre-99 sunk costs and the current CWRPDA specific costs from the FY09 Interim Cost Allocation is added to the inflated baseline to calculate the balance to be repaid.

Utilizing the original methodology, the IRC would have been $49,120,922 for the FY2009 Interim Cost Allocation, as shown in upper box of the attached table. Utilizing the modified methodology, the IRC is $48,670,161 for the FY2009 Interim Cost Allocation, as shown in the lower right box of the attached table. This adjustment to the calculation of the IRC more closely represents increases in joint costs due to inflation. As such, this method will be used in future Cost Allocations, provided no significant objections are raised by you or your agency.

If you have any questions, please contact Ryan Randol at 970-385-6531.

Sincerely,

Carol DeAngelis
Area Manager,
Western Colorado Area Office

Enclosure

Identical Letter Sent To:

Continued on next page.

Subject: Modification to the Methodology to Estimate the Inflated Reimbursement Cap

Identical Letter Sent To:

Continued from previous page.

Mr. Randy Kirkpatrick
Executive Director
San Juan Water Commission
1450 East Main
Farmington, NM 87402

Mr. Randy Seaholm
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, CO 80203

Ms. Stella Montoya
President
La Plata Conservancy District
1592 Highway 172
La Plata, NM 87418

bc: UC-446;
FCCD-100; FCCD-110;
[redacted]WCD-EWarner; WCD- RRandol;
(w/encl to each)

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COMPARISON OF INFLATED REIMBURSEMENT CAP CALCULATION METHODS

ORIGINAL CALCULATION METHOD

$$\frac{\$43{,}000{,}000 \text{ (ORIGINAL REIMBURSEMENT CAP)}}{\$500{,}000{,}000 \text{ (CCE@ 10/03)}} = \frac{\text{INFLATED REIMBURSEMENT CAP @10/08 (FY2009)}}{\$571{,}173{,}508 \text{ (COSTS @ FY2009 PRICE LEVEL)}}$$

INFLATED REIMBURSEMENT CAP @ FY2009 PRICES = $ 49,120,922

MODIFIED CALCULATION METHOD

VALUES FROM RUN #4 (Interim Cost Allocation based on the "Official" $500M January 2003 CCE)

SECTION 5 REMAINING JOINT COSTS	$ 346,845,194
NON-INDIAN REIMBURSABLE (W/O SEC 207) 1/	$ 66,589,073
NON-INDIAN M&I SPECIFICS	$ 1,096,174
NON-INDIAN PRE-99 SUNK COSTS 2/	$ 7,142,064

CAP CALCULATION

W/O SEC 207		W SEC 207		
NON-INDIAN REIMBURSABLE	$ 66,589,073	NON-INDIAN REIMBURSABLE	$	43,000,000
NON-INDIAN M&I SPECIFICS	- $ 1,096,174	NON-INDIAN M&I SPECIFICS	- $	1,096,174
NON-INDIAN PRE-99 SUNK COSTS	- $ 7,142,064	NON-INDIAN PRE-99 SUNK COSTS	- $	7,142,064
BALANCE TO BE REPAID	= $ 58,350,835	BALANCE TO BE REPAID	= $	34,761,762

INFLATED REIMBURSMENT CAP CALCULATION PERCENTAGE

$$\frac{\$ \ 34{,}761{,}762}{\$ \ 58{,}350{,}835} = \mathbf{59.5737182\%}$$

VALUES FROM RUN #6 (Costs at the Oct 2008 (FY09) Price Level: $571,173,508)

SECTION 5 REMAINING JOINT COSTS	$ 396,226,356
NON-INDIAN REIMBURSABLE (W/O SEC 207)	$ 76,028,733
NON-INDIAN M&I SPECIFICS	$ 1,211,457
NON-INDIAN PRE-99 SUNK COSTS	$ 7,142,064

CAP CALCULATION

W/O SEC 207		W SEC 207		
NON-INDIAN REIMBURSABLE	$ 76,028,733	BALANCE TO BE REPAID	$	67,675,212
NON-INDIAN M&I SPECIFICS	- $ 1,211,457	CAP CALCULATION PERCENTAGE	x	59.5737182%
NON-INDIAN PRE-99 SUNK COSTS	- $ 7,142,064	ADJUSTED BALANCE TO BE REPAID	= $	40,316,640
BALANCE TO BE REPAID	= $ 67,675,212	NON-INDIAN SPECIFICS	+ $	1,211,457
		NON-INDIAN PRE-99 SUNK COSTS	+ $	7,142,064
		INFLATED REIMBURSEMENT CAP	= $	48,670,161

1/ The Non-Indian Reimbursable value is considered to be the sum of: the ALPWCD joint costs, the ALPWCD specific costs, the SJWC joint costs, the LCD joint costs and the COLORADO joint costs.

2/ The NON-INDIAN PRE-99 SUNK COSTS were calculated by multiplying the Non-Indian percentage (18.88%) by $37,823,804 which is the value of the Joint Sunk Costs as given in the Run #4 Interim Cost Allocation based on the $500M CCE.