

Contract No. 04-WC-40-010

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

COLORADO RIVER STORAGE PROJECT
WAYNE N. ASPINALL STORAGE UNIT

LONG-TERM WATER SERVICE CONTRACT BETWEEN
THE UNITED STATES
and
THE UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT

THIS CONTRACT, made this 1st day of April 2004, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, and particularly Pursuant to the Colorado River Storage Project Act approved April 11, 1956 (70 Stat. 105), between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by the officer executing this contract, his duly appointed successor or his duly authorized representative, hereinafter referred to as the Contracting Officer, and the UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT, a water conservancy district organized pursuant to the Water Conservancy Act (§§ 37-45-101, *et seq.*, C.R.S. (2003)), hereinafter referred to as the District,

WITNESSETH:

WHEREAS, the following statements are made in explanation:

(a) The United States has constructed Blue Mesa Dam and Reservoir as a unit of the Colorado River Storage Project, for the furnishing of water for irrigation, municipal, and other beneficial uses; and

(b) The District has filed in the Water Court, Water Division 4, Colorado, an Application for Approval of Plan for Augmentation (Case No. 03CW49) and is in the process of completing and filing with the Colorado Division of Water Resources an application for renewal of its Substitute Water Supply Plan for water uses within Upper Gunnison River Basin and is requesting a water service contract for 500 acre-feet of municipal and industrial (M&I) water stored in Blue Mesa Reservoir to support the District's Plan for Augmentation and Substitute Water Supply Plan; and

(c) The 500 acre-feet of M&I water may be resold by the District under third-party contracts to non-agricultural water users within the Gunnison River Basin who are covered under the District's Plan for Augmentation and Substitute Water Supply Plan and can benefit from water released from Blue Mesa Reservoir.

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

1. TERM OF CONTRACT

- (a) This contract shall be effective for 40 years from the date of execution.
- (b) The District may terminate this contract at any time.
- (c) Termination as above provided shall be accomplished by written notice by the District to the United States pursuant to Article 9 herein, at least 1 year prior to the date of such termination.
- (d) Upon failure of the District to perform its obligations under this contract, the United States will notify the District in writing of the intent to terminate this agreement. The said Notice of Termination shall specify each failure of the District, and shall further provide that the District may, within a 90-day period from the date of said notice, present a detailed program to correct such deficiencies, and the United States shall review and reasonably accept such corrections and thereby waive the termination notice.

2. RESALE OF WATER

- (a) The Contracting Officer shall store a total of 500 acre-feet of M&I water in Blue Mesa Reservoir for the District to resell under third-party contracts in the form attached hereto as ADDENDUM B. Any modifications to the form of third-party contract shall be satisfactory to and approved by the Contracting Officer.
- (b) For purposes of Section G (g) of ADDENDUM "A" to this Contract, approved third-party contracts shall not be deemed to be subcontracts.
- (c) The District and the third-party contractors shall sign the third-party contracts then submit them to the Contracting Officer for his/her signature and execution. All third-party contracts shall be submitted to the Contracting Officer at the following address: Bureau of Reclamation, Western Colorado Area Office, Water Management Group Chief, 2764 Compass Drive Suite 106, Grand Junction CO 81506.

(d) All third-party contracts shall have a term equal to or less than the term of this contract.

(e) All third-party contracts shall refer to and be subject to the terms and conditions of this contract.

3. DELIVERY OF WATER

(a) The Contracting Officer, during the term of this contract shall release water, not to exceed 500 acre-feet at the outlet works of the Blue Mesa Dam.

(b) Requests for the release of water under this contract from Blue Mesa Reservoir shall be made by the Colorado Division of Water Resources, Water Division 4 Engineer, by calling the Water Management Group at the Western Colorado Area Office of the Bureau of Reclamation at (970) 248-0652 or (970) 248-0600.

(c) The District shall have no holdover storage rights in Blue Mesa Reservoir from year to year. Any water purchased hereunder not called for by the end of each calendar year shall become integrated with the water supply for all purposes of the Blue Mesa Reservoir and be available for all purposes at that time.

4. RATE AND METHOD OF PAYMENT FOR DELIVERY OF WATER

(a) The District shall pay the United States annually only for the quantity of water it has sold using third-party contracts approved and executed by the Contracting Officer pursuant to Article 2(b) herein (hereinafter referred to as approved third-party contracts), whether or not such water is released pursuant to paragraph 3. The payment rate for delivery of M&I water pursuant to this Contract will be reviewed and adjusted annually in accordance with the established Debt Service Methodology used for pricing water service from the Colorado River Storage Project. The Debt Service Methodology is based upon the costs of servicing a portion of the Federal debt incurred in developing water for consumptive uses in the Colorado River Storage Project initial units named Navajo Reservoir, Wayne N. Aspinall, Glen Canyon, and Flaming Gorge. The debt to be serviced by this Contract, established as of January 1, 2004 is \$611,745.00, based on a total contractual water supply of 500 acre-feet annually.

The first year per acre-foot rate of \$71.66 will be charged for any approved third-party contract and is calculated from an amortization of the total debt service amount of \$611,745.00, using the annuity due formula, a 40-year payment term, and an interest rate of 5.49 percent, which is the 2001 annual average rate for 20-year Treasury constant maturities.

For each succeeding year thereafter, the cumulative debt to be serviced from executed third-party contracts shall be recalculated as of each January 15 in accordance with the following:

$$D_n = D_{n-1} - P_{n-1} + N_{n-1} + I_{n-1} \pm \Delta R_{n-1}$$

- Where: D_n = The recalculated total debt to be serviced by the District only for water sold under all approved third-party contracts.
- D_{n-1} = The debt to be serviced by the District as it existed at the beginning of the previous year.
- P_{n-1} = Payments for water service made by the District for the previous year's approved third-party contracts.
- N_{n-1} = New debt to be serviced on water sold under approved third-party contracts during the previous year. The amount of new debt added each year is calculated by: \$611,745.00 x (total # of acre-feet sold under approved third-party contracts that year/500 acre-feet)
- I_{n-1} = Interest accrued for the previous year based on the annual average interest rate of the previous year for 20-year Treasury constant maturities.
- ΔR_{n-1} = A pro rata share of any change during the previous year in multipurpose costs allocated to consumptive use for the consolidated Colorado River Storage Project.

The rate per acre-foot for payments after the first year shall then be determined in accordance to the following procedure:

STEP 1: D_n for the year of calculation is divided by the total number of acre-feet sold under approved third-party contracts during the previous year = X.

STEP 2: Amortize X, using the annuity due formula, with the interest rate as describe above and for the number of years equal to 40 minus the number of years this Contract has been in effect.

(b) The first annual payment for water service and O&M charges by the District for each third-party contract shall be submitted along with the third-party contract pursuant to paragraph 2.(c) herein. The amount due the United States shall be based on increments of 1 acre-foot. *Example: the District submits 10 third-party contracts for a total of 30 ½ acre-feet of water, the amount due the United States shall be for 31 acre-feet of water.*

(c) For each annual payment thereafter, the United States will bill the District by February 15, and the District agrees to pay for the amount of water sold under approved third-party contracts at the then-current rate calculated according to the above procedure, and based on increments of 1 acre-foot. Additionally, an adjustable operations and maintenance surcharge, currently \$1.00 per acre-foot, will be added annually to the M&I delivery rate for water sold under approved third-party contracts. Upon receipt of such bill for water, the District shall remit payment to the United States within 45 days from the date of said bill.

(d) All payments from the District 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.

(e) Federal revenues generated pursuant to this Contract shall be credited in accordance with Section 5 of the Colorado River Storage Project Act.

5. CHARGES FOR DELINQUENT PAYMENTS

(a) The District shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the District shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, in addition to the interest charge, the District shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, in addition to the interest and administrative charges, the District shall pay a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The District shall also pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of either 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. The interest charge rate will 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 charges, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

6. GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

(b) The payment of charges becoming due pursuant to this contract is a condition precedent to receiving benefits under this contract. The United States shall not make water available to the District through the Colorado River Storage Project, Aspinall Storage Unit facilities during any period in which the District is in arrears in the advance payment of water rates due the United States. The District shall not deliver water under the terms and conditions of this contract for lands or parties that are in arrears in the advance payment of water rates as levied or established by the District.

7. MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION

(a) The water to be released for the District shall be measured by facilities of the United States and delivered into the Gunnison River at the outlet works of Crystal Dam. The District shall suffer all distribution and administration losses from the point of such delivery to the place of use.

(b) The District shall hold the United States harmless on account of damage or claim of damage of any nature whatsoever, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water by the District.

(c) This contract and all water taken pursuant hereto shall be subject to and controlled by the Colorado River Compact, dated November 24, 1922, and proclaimed by the President of the United States June 25, 1929, the Boulder Canyon Project Act approved December 21, 1928, the Boulder Canyon Project Adjustment Act of July 19, 1940, Upper Colorado River Basin Compact dated October 11, 1948, the Mexican Water Treaty of February 3, 1944, and the Colorado River Basin Project Act of September 30, 1968, Public Law 90-537.

(d) In the event water available to the District is required to be curtailed under and by reason of the provisions of the foregoing acts, including the reaching of maximum use of water allotted to the State of Colorado, no liability shall attach to the United States for such curtailment, and the District agrees to reduction of the amount of water taken hereunder as the Secretary determines necessary to comply with the provisions of said acts.

8. UNITED STATES NOT LIABLE FOR WATER SHORTAGE--ADJUSTMENTS

On account of drought, errors in operation, or other causes, there may occur at times a shortage during any year in the quantity of water released at the request of the District by the United States pursuant to this contract through and by means of the project, and 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 therefrom. In any year in which there may occur such a shortage, the United States reserves the right to apportion the available water supply among the District and others entitled, under existing and future contract(s), to receive water from the same project water supply all in a manner to be prescribed by the Contracting Officer.

9. NOTICES

Any notice, demand, or request authorized or required by this contract other than as addressed in Article 2(b) or requests for the release of water as addressed in Article 3 (b) above shall be deemed to have been given on behalf of the District 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 District to the Manager, Upper Gunnison River Water Conservancy District, 200 East Virginia Ave., Gunnison CO 81230. 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.

10. ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

11. STANDARD CONTRACT ARTICLES

The standard contract articles applicable to this contract are listed below. The full text of these standard articles is attached hereto as Addendum "A " and by this reference made a part thereof.

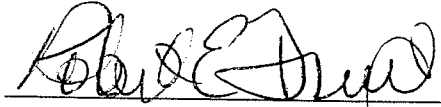
- A. CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS
- B. BOOKS, RECORDS, AND REPORTS
- C. RULES, REGULATIONS, AND DETERMINATIONS
- D. CHANGES IN CONTRACTOR'S ORGANIZATION
- E. PROTECTION OF WATER AND AIR QUALITY
- F. OFFICIALS NOT TO BENEFIT
- G. EQUAL EMPLOYMENT OPPORTUNITY
- H. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS
- I. CERTIFICATION OF NONSEGREGATED FACILITIES

12. CONTRACT DRAFTING CONSIDERATIONS

Articles 1 through 12 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.

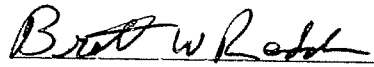
IN WITNESS WHEREOF, the parties hereto have caused this contract to be duly executed as of the day and year first written above.

UPPER GUNNISON RIVER WATER
CONSERVANCY DISTRICT



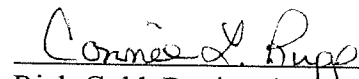
Robert E. Drexel, President

Attest:

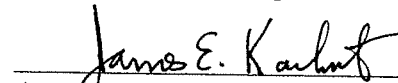


Brett W. Redden, Secretary

UNITED STATES OF AMERICA
BUREAU OF RECLAMATION



Rick Gold, Regional Director
Upper Colorado Region



Approved by
Office of the Regional Solicitor

ADDENDUM "A"

A. CONTINGENT UPON 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 District from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

B. BOOKS, RECORDS, AND REPORTS

Upper Gunnison shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including the District's financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal 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.

C. 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 Federal reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal 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, the State of Colorado and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the District.

D. CHANGES IN CONTRACTOR'S ORGANIZATION

While this contract is in effect, no change may be made in the District's organization which may affect the respective rights, obligations, privileges, and duties of either the United States or the District under this contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

E. PROTECTION OF WATER AND AIR QUALITY

Project facilities used to make available and deliver water to the District shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: *Provided, That* the United States does not warrant the quality of the water delivered to the District and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the District.

(b) Upper Gunnison shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Colorado: and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by Upper Gunnison; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or project water provided by Upper Gunnison within Upper Gunnison's Project Water Service Area.

F. OFFICIALS NOT TO BENEFIT

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

G. EQUAL EMPLOYMENT OPPORTUNITY

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

(a) The District will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The District 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, disability, 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 District 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 District will, in all solicitations or advertisements for employees placed by or on behalf of the District, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.

(c) The District 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 labor union or workers' representative of the District'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 District will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The District will furnish all information and reports required by Executive Order 11246 of September 24, 1965, 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 Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the District's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the District may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The District 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 Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The District 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 District becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the District may request the United States to enter into such litigation to protect the interests of the United States.

H. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

(a) The District shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Title II of the Americans with Disabilities Act of 1990 if the entity is a State or local government entity [Title III if the entity is a non-government entity], 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 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 on the grounds of race, color, national origin, disability, or age. By executing this contract, the District 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 District 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 District 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 District 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.

(d) Complaints of discrimination against the District shall be investigated by the Contracting Officer's Office of Civil Rights.

I. CERTIFICATION OF NONSEGREGATED FACILITIES

The District hereby certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The District agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin,

because of habit, local custom, disability, or otherwise. The District further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT
FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES**

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.