

1 | With comments from 02-25-2011, 04-06-2011, 08-10-2011 and 01-20-2012  
2 | Negotiation Meetings  
3 | Draft 01/20/2012  
4 |

5 | Contract No. \_\_\_\_\_  
6 |

7 | UNITED STATES  
8 | DEPARTMENT OF THE INTERIOR  
9 | BUREAU OF RECLAMATION  
10 |

11 | ANIMAS-LA PLATA PROJECT  
12 | COLORADO RIVER STORAGE PROJECT  
13 |

14 | REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND  
15 | THE STATE OF COLORADO  
16 | DEPARTMENT OF NATURAL RESOURCES  
17 | COLORADO WATER CONSERVATION BOARD  
18 |

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

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

ANIMAS-LA PLATA PROJECT  
COLORADO RIVER STORAGE PROJECT

REPAYMENT CONTRACT BETWEEN THE UNITED STATES  
AND THE STATE OF COLORADO

THIS REPAYMENT CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_, 2011,  
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 the STATE OF COLORADO, acting by and through the  
Department of Natural Resources, Colorado Water Conservation Board, hereinafter  
called the State, located in Denver, Colorado, 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 Act; 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

1 Project has among its authorized purposes the furnishing of water for municipal,  
2 industrial, domestic, and other beneficial purposes. The water rights settlement purposes  
3 of the Project were authorized by the Colorado Ute Indian Water Rights Settlement Act  
4 of 1988 (Public Law 100-585) as amended by the Colorado Ute Settlement Act  
5 Amendments of 2000, Public Law 106-554 (hereafter referred to as the Settlement Act,  
6 as amended).

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

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

17 (d) As provided by Public Law 100-585, the design and construction functions of  
18 the Bureau of Reclamation with respect to the Animas-La Plata Project shall be subject to  
19 the provisions of the Indian Self-Determination and Education Assistance Act (Public  
20 Law 93-638) to the same extent as if such functions were performed by the Bureau of  
21 Indian Affairs.

1 (e) Adequate water rights for the Project have been obtained in Colorado and  
2 New Mexico, and the United States is satisfied that any conflicts between private water  
3 rights and Project water rights have been resolved.

4 (f) The State is interested in contracting for the water supply allocated to the  
5 State of Colorado pursuant to Public Law 106-554.

6 (g) The State has demonstrated its legal and financial capability to make the  
7 contributions and payments required by this document, by demonstrating that it is a legal  
8 entity under state law, and that it has appropriated funds in amounts sufficient for this  
9 obligation.

10 (h) In May of 2001, Reclamation prepared an Interim Cost Allocation, based on  
11 October 2001 price levels of the estimated Project construction costs, which established  
12 the repayment obligation of the State as \$32,808,350 at that time. This Interim Cost  
13 Allocation continues to be updated annually to reflect the impacts of inflation on Project  
14 construction costs as described in Article 7 herein.

15 (i) The Consolidated Appropriations Act of 2005 (December 8, 2004) (P.L. 108-  
16 447) provides in Division C, Title II, Section 207 (commonly referred to as "Section  
17 207") the Secretary the authority to forgive the obligation of the non-Indian sponsors  
18 relative to the \$163 million increase in estimated total project costs that occurred in 2003.  
19 On December 30, 2005, the last sentence of Section 207 was amended to also forgive the  
20 costs of the effects of inflation on the \$163 million increase (Department of Defense  
21 Appropriations Act, 2006 - December 30, 2005, P.L. 109-140).

22 (j) It is the intent of both the United States and the State that any rights granted  
23 by this Agreement are not limited to a specific term but would instead continue in full

1 force and effect pursuant to section 9 of the Reclamation Project Act of 1939, 43 U.S.C. §  
2 485h, and this Agreement will remain in full force and effect during the Useful Project  
3 Life, and as provided in **Article** 7(l) below.

4 (k) The parties hereto desire to enter into this contract in order to secure this  
5 municipal and industrial water supply pursuant to the terms and conditions of Public Law  
6 106-554 for the use of such water in and for the benefit of Colorado as hereinafter  
7 provided.

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

10

11 1. GENERAL DEFINITIONS

12 Where used in this contract:

13 (a) "Association" means the Animas-La Plata Operations, Maintenance, and  
14 Replacement Association, established by the Project sponsors who were signatories to the  
15 IGA, dated March 4, 2009, pursuant to the Colorado Uniform Unincorporated Nonprofit  
16 Association Act, 7-30-101 et seq., CRS (2006), to carry out the OM&R activities and  
17 responsibilities of the Project.

18 (b) "Colorado Ute Tribes" means the Southern Ute Indian Tribe, a federally  
19 recognized Indian tribe, and the Ute Mountain Ute Tribe, a federally recognized Indian  
20 tribe.

21 (c) "Consultation" means the United States shall notify and confer with the State  
22 regarding significant decisions pertaining to this contract. In the event that consensus

1 cannot be reached and the United States makes a decision, appeals are available to the  
2 extent allowed under applicable laws.

3 (d) "Estimated Repayment Obligation" means the reimbursable construction costs  
4 allocated to the State's M&I uses associated with the construction of Project Works plus  
5 any appropriate Interest During Construction (IDC).

6 (e) "Final Repayment Obligation" means the final reimbursable construction costs  
7 allocated to the State's M&I uses associated with the construction of Project Works, plus  
8 any appropriate IDC, as determined through the Final Cost Allocation described in  
9 Article 7(d) below.

10 (f) "IGA" or "Intergovernmental Agreement" means that agreement, effective  
11 March 4, 2009, which has been executed by the Colorado Water Resources and Power  
12 Development Authority; the San Juan Water Commission, a political subdivision of the  
13 State of New Mexico, the La Plata Water Conservancy District, a political subdivision of  
14 the State of New Mexico; the Southern Ute Indian Tribe, a federally recognized Indian  
15 tribe; the Navajo Nation, a federally recognized Indian tribe; and the Ute Mountain Ute  
16 Tribe, a federally recognized Indian tribe, and their authorized assignees, that have been  
17 identified by the Settlement Act, as amended, to receive a water allocation that created  
18 the Association to operate and maintain the Project.

19 (g) "Non Contract costs" means the costs of work or services provided by  
20 Reclamation staff and/or service contractors in support of the project. Non-contract costs  
21 refer to the costs of work or services provided in support of the project, some of which can be  
22 expensed against a specific plant account, and other work which is of such a broad non-  
23 specific nature that it can only be attributed to the project as a whole. These latter costs are  
24 also referred to as "distributive costs." Non-contract costs refer to the work or services

1 provided in support of the project, some of which can be expensed against a specific plant  
2 account, and other work which is of such a broad non-specific nature that it can only be  
3 attributed to the project as a whole. These costs generally originate for work or services  
4 provided by agency personnel (or contractor personnel used to augment agency  
5 resources), or land or right-of-way acquisitions to facilitate project development

6 (h) "Operation and Maintenance Facilities" or "Permanent Operations Facility"  
7 means those facilities necessary to support operations, maintenance and replacement  
8 work, including permanent operating facility building headquarters with associated office  
9 space, shop for repair and housing of the maintenance support equipment, storage place  
10 for supplies, and equipment yard.

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

15 (j) "Project Construction Committee" means the committee made up of  
16 representatives of those entities that have been identified by the Settlement Act, as  
17 amended, to receive a water allocation and the Bureau of Reclamation. This committee  
18 has provided and will provide coordination and consultation on the construction activities  
19 among all the project beneficiaries, seeking common understanding and consensus on  
20 decisions associated with such items as final plans for Project Works, project  
21 construction completion schedule, and Project construction costs.

22 (k) "Project Operator" means the Association operating the Project Works.

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

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

7 (n) "Remaining Repayment Obligation" means the difference, if any, between the  
8 Estimated Repayment Obligation and the Final Repayment Obligation as determined  
9 through the Final Cost Allocation described in Articles 7(d) and 7(g) below.

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

11 (p) "State" or "Contractor" means the STATE OF COLORADO, acting by and  
12 through the Department of Natural Resources, Colorado Water Conservation Board,  
13 located in Denver, Colorado, or its assignees.

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

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

20 (s) "Useful Project Life" means the period of time the Project is able to provide the  
21 authorized Project benefits pursuant to Sec. 6(a)(1)(A)(i)(VI) of the Settlement Act, as  
22 amended.

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

6

7 2.

PROJECT WORKS

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

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

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

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

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

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

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

13 (c) Any additions, changes to, or operation of Project Works or changes in use of  
14 the water allocations pursuant to Sec. 6(a)(1)(A)(ii) of the Settlement Act, as amended,  
15 from that stated in the Animas-La Plata Final Supplemental Environmental Impact  
16 Statement (FSEIS) dated July 2000 and subsequent Record of Decision dated September  
17 25, 2000, will, if required by law, be subject to further compliance with applicable  
18 environmental statutes, which shall include an analysis of potential impacts on other  
19 project participants.

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

23

1 3. PROJECT COORDINATION COMMITTEES

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

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

14 (b) The Project Operations Committee consisted of representatives from those  
15 entities that were identified by the Settlement Act, as amended, to receive a water  
16 allocation and the Bureau of Reclamation. This committee determined an appropriate  
17 entity to contract with Reclamation for the operation, maintenance, and replacement  
18 (OM&R) of the Project Works and developed a common understanding among the  
19 project beneficiaries of the appropriate level of annual OM&R activities to be performed  
20 on the Project Works to assure the Project's long term operational integrity and public  
21 safety. This committee was essentially replaced by the Association who subsequently  
22 entered into an OM&R contract with Reclamation. Ultimately, the Association will  
23 oversee the ongoing OM&R activities of the Project Works, providing consultation and

1 coordination among Association members on such items as annual OM&R funding,  
2 maintenance schedules, and public safety issues.

3

4 4. MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION OF  
5 STATUTORY WATER ALLOCATION

6  
7 (a) The water released or bypassed for the State pursuant to this contract shall be  
8 measured at the outlet works of Ridges Basin Dam, and/or in the Animas River at the  
9 Durango Pumping Plant with measuring facilities installed by the United States as a part  
10 of the Project. Additional points of diversion directly from Lake Nighthorse may be made  
11 in the future by the State after consultation and approval of the United States. Water  
12 delivered at these additional points of diversion on Lake Nighthorse shall be measured at  
13 those points of diversion by facilities provided by the State or its subcontractors. Water  
14 will be available at the outlet works of Ridges Basin Dam and/or the Animas River in  
15 such quantities as the State determines, subject to capacity limitations of the relevant  
16 facilities, to ensure that the State annually receives a municipal and industrial water  
17 allocation with an average annual depletion not to exceed \_\_\_\_\_ acre-feet.

18 (b) Once water is released from the outlet works of Ridges Basin Dam, bypassed at  
19 the Durango Pumping Plant or diverted from Lake Nighthorse, the United States will not  
20 be responsible for the control, carriage, handling, use, disposal, or distribution of the  
21 Statutory Water Allocation furnished to the State, or for any damage of any nature  
22 whatsoever arising out of or connected to the control, carriage, handling, treatment, use,  
23 disposal of the Statutory Water Allocation by the State, except when caused by the direct  
24 action of the United States.

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

5

6 5. ALLOCATION AND USE OF PROJECT WATER

7 (a) The State's allocation of water provided by the Project consists of a municipal  
8 and industrial water allocation with an average annual depletion not to exceed \_\_\_\_  
9 acre-feet, except as otherwise provided under Article 7(h) herein. This allocation may be  
10 met by a combination of direct diversion of the natural flows from the Animas River and  
11 water released and/or diverted from Project storage and subsequently diverted from the  
12 Animas River.

13 (b) Except as provided in Article 7(h) herein, the State shall have the right to 10,440  
14 acre-feet of storage in Lake Nighthorse to supplement the amount of direct flow diversion  
15 as necessary to fulfill the State's annual Project Water allocation of \_\_\_\_ acre-feet  
16 average annual depletion. Unless the Intergovernmental Agreement is in effect, any  
17 portion of the 10,440 acre-feet of unused storage shall be retained in Lake Nighthorse and  
18 shall be available for the State's use in succeeding years. The State shall have the  
19 opportunity to purchase excess Project water from other Project participants.

20 (c) If required to ensure that the average annual depletion allocation of \_\_\_\_ acre-  
21 feet is met, the water may be used and reused to the extent permitted by the Project  
22 decrees and Federal authorizations. In addition, the water may be used at any location in

1 the State of Colorado, or may be used by exchange or augmentation. Also, the water may  
2 be used for compact compliance purposes.

3 (d) The United States, after compliance with applicable environmental compliance  
4 statutes, shall cooperate with the State, its subcontractors or assignees, to provide  
5 appropriate interests in land needed for delivery of Project Water through non-project  
6 facilities.

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

11

12 6. WATER RIGHT PROVISIONS

13 (a) Upon request of the United States, and if the State agrees in writing, the State  
14 will assign the water rights, if any, that it holds associated with the Project water rights to  
15 the United States for the benefit of users of Project Water. The State, or its assignee, will  
16 also protect its interest in the Project Water rights and in case a dispute arises as to the  
17 character, extent, priority or validity of the rights of the United States or the State to use  
18 or permit use of Project Water, the State shall promptly bring and diligently prosecute  
19 and/or defend judicial proceedings for the determination of such dispute and shall take all  
20 other measures necessary toward the defense and protection of the Project water supply.  
21 The United States, upon request of the State, will enter into the proceedings to defend  
22 such rights.

23

1 (b) The construction of the Project Works, the allocation of the water supply from  
2 those facilities to the Colorado Ute Tribes, and the provision of funds to the Colorado Ute  
3 Tribes in accordance with section 16 of Public Law 106-554, and the issuance of an  
4 amended final consent decree by the State of Colorado as contemplated in subsection  
5 18(c) of Public Law 106-554 shall constitute final settlement of the tribal claims to water  
6 rights on the Animas and La Plata Rivers in the State of Colorado.

7  
8 7. METHOD OF PAYMENT FOR PROJECT CONSTRUCTION COSTS

9 (a) Reclamation has developed a Fiscal Year 2011 (FY11) Update to the May 2001  
10 Interim Cost Allocation using October 2010 price levels of the estimated Project  
11 construction costs. The FY11 Update to the May 2001 Interim Cost Allocation allocates  
12 the reimbursable costs of the project among the Project beneficiaries based on the pro rata  
13 share of Project storage each respective entity receives in Lake Nighthorse. The State's  
14 water capital obligation allocable to its Project storage in the ~~FY11-FY12~~ Update to the  
15 May 2001 Interim Cost Allocation is ~~\$36,352,172~~ \$37,973,815 which includes construction  
16 costs of ~~\$27,914,909~~ \$28,010,288 and estimated IDC of ~~\$9,872,527~~ \$9,437,263 through  
17 ~~September 30, 2010~~ July 31, 2011 and which takes into account Section 207 of Public  
18 Law 108-447 as amended. This amount is the State's Estimated Repayment Obligation.

19 (b) The construction costs allocated to the State shall accrue interest during  
20 construction at the Project Interest Rate of 8.315% as established pursuant to the  
21 provision of Section 5(f) of the Act of April 11, 1956 (70 Stat. 105) as amended by the  
22 Act of June 27, 1960 (74 Stat.255).

**Comment [BOR1]:** M Loring to add input for year to be entered here.

**Comment [BOR2]:** Reclamation – ML to provide updated information i.e. Years, #'s.

Another/Additional information to be added if reduced amount.

**Comment [BOR3]:** 08/10/11 – ML to provide further in depth on IDC

**Comment [ppage4]:** These \$ amounts assume State takes full allocation of water. State will need defined number data identified for quantity of water and construction costs.

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

5 (d) At the end of the construction period of the multipurpose Project Works a final  
6 cost allocation will be performed by the Secretary pursuant to Section 6(a)(3)(B) of the  
7 Settlement Act, as amended. The State will pay only its allocable share of joint costs of  
8 the Project Works. Any additional repayment shall be warranted only for reasonable and  
9 unforeseen costs associated with project construction as determined by the Secretary in  
10 consultation with the State, taking into account Section 207 of Public Law 108-447 as  
11 amended and, Reclamation's Decision Memorandum, "Methodology Regarding  
12 Implementation of Section 207 on Up-Front Cost-Sharing and Repayment, Animas-La  
13 Plata Project (August 2, 2006)" as amended and attached, and other appropriate  
14 documents. Section 207 limits the non-tribal repayment obligation to \$43 million for the  
15 \$500 million project (10/03 prices). The language, as amended, results in:

- 16 • No repayment of the \$163 million of cost increases
- 17 • No repayment of the effects of inflation on the \$163 million of cost increases
- 18 • Implies repayment on the effects of inflation on the \$337 million (\$500  
19 million -\$163 million), which implies some inflation of the reimbursement  
20 cap.

21 (e) The details of said costs and a draft final cost allocation will be furnished to the  
22 State by the United States, and the State reserves the right to review the input to the cost  
23 allocation, including the assignment of costs to the municipal and industrial water

1 purpose and the allocation thereof to the State's repayment obligation. Following  
 2 consultation and review by the State, the final allocation of reimbursable costs will be  
 3 prepared by the United States. These costs will be subject to alternative dispute resolution  
 4 as described in **Article 8** if there remains a dispute in the allocation of costs.

5 (f) The United States shall give the State written notice of the State's Final  
 6 Repayment Obligation as established by the final cost allocation. In the event the final  
 7 cost allocation establishes that the Final Repayment Obligation is in excess of any  
 8 payments made by the State toward the Estimated Repayment Obligation of ~~\$36,352,172~~  
 9 the State will have the option to pay the remaining balance of the Final Repayment  
 10 Obligation 180 days from the date of written notice.

11 (g) After the 180-day final payment option established in **Article 7(f)** has expired,  
 12 the unpaid portion of the Final Repayment Obligation shall become the Remaining  
 13 Repayment Obligation of the State. The United States will assign that Remaining  
 14 Repayment Obligation, on a pro rata basis, to a portion of the State's Project interest,  
 15 subject to the procedures of Section 6(a)(3)(B) of the Settlement Act, as amended. The  
 16 formula to determine the portion of the State's Project interest that this Remaining  
 17 Repayment Obligation will be assigned is as follows:

18 Remaining 19 Project interest = $\frac{\text{Final Repayment Obligation} - \text{Repayment Received}}{\text{Final Repayment Obligation}}$ x 20 Requiring Repayment	Total Project interest
--	------------------------------

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

**Comment [BOR5]:** M Loring will be providing updated numbers along with updated IDC #'s

**Comment [ppage6]:** Assuming full allocation of water.

Percentage maximum verbiage (sub-article) may be proposed by Reclamation. Block notice may be an avenue.

Both State and Reclamation to explore options for future discussions.

**Comment [BOR7]:** State may provide language for paragraph.

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

**Comment [BOR8]:** Ensure is consistence with Article 9 VM 012012

10 (h) Upon final cost allocation, if the State elects not to pay the Remaining  
11 Repayment Obligation to the United States for the remaining Project interest described  
12 and calculated in Article 7(g), then this portion of the State's Project interest shall be  
13 subject to the procedures of relinquishment as specified by Section 6(a)(3)(B) of the  
14 Settlement Act, as amended.

**Comment [BOR9]:** Same as above comment 012011

**Comment [BOR10]:** Need to look at law and how timing plays into FCA and relinquishment. And Article 9

15 (i) It is agreed that during construction every attempt will be made to keep Non-  
16 Contract Costs at or below 30 percent of the final contract costs. The United States will  
17 continue to annually report to the State the dollar amount of the Non-Contract Costs and  
18 all other construction costs.

**Comment [BOR11]:** With remaining project storage

19 (j) The United States has consulted and will consult annually with the State  
20 concerning the allocation of construction costs and any interest during construction to be  
21 payable by the State under this Contract. The Use of Facilities Procedure, whereby each  
22 participant is allocated its share of joint costs proportionate to its use of joint facilities, is

1 the methodology used to allocate construction costs for the Project, and it will not be  
2 changed for the administration of this Contract.

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

5 (l) Pursuant to section 9(c)(1) of the Reclamation Project Act of 1939, 43 U.S.C. §  
6 485h, following payment of the Final Repayment Obligation described herein, all other  
7 contract terms will remain in full force and effect for the Useful Project Life, or until  
8 mutually agreed upon by the State and the United States.

9 (m) Upon payment of the State's Final Repayment Obligation as defined in the final  
10 cost allocation, the State's Project interest shall not be subject to relinquishment to the  
11 Secretary for any reason, subject to applicable law.

12

13 8. ALTERNATIVE DISPUTE RESOLUTION

14 (a) If a dispute pertaining to the terms of this contract should arise between the State  
15 and the United States, each party shall communicate in good faith and seek to resolve the  
16 dispute expeditiously and amicably. Prior to seeking judicial review of the final cost  
17 allocation, the State may pursue non-binding Alternative Dispute Resolution ("ADR") of  
18 any issue arising out of the final cost allocation which affects the State and remains  
19 unresolved after direct communication between the parties.

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

- 1 (1) Within twenty (20) days after such demand the other party shall either agree  
2 to the named individual, or suggest another arbitrator. If the parties cannot  
3 agree on such naming within 20 additional days, such individual shall be  
4 named by the American Arbitration Association.
- 5 (2) The ADR costs and expenses of each party shall be borne by that party and  
6 all the joint fees and other expenses pursuant to this Article shall be borne  
7 equally by both parties.
- 8 (3) The hearing shall be held at such time and place as designated by the  
9 arbitrator on at least twenty (20) days written notice to the parties.
- 10 (4) All decisions determined by this ADR process shall be sent to all parties to  
11 the proceedings.
- 12 (5) As to any procedures regarding the conduct of the ADR that are not  
13 specified either in this Contract or in any other written agreement signed in  
14 advance of the hearing, the parties shall follow the Commercial Arbitration  
15 Rules of the American Arbitration Association.
- 16 (c) Nothing in this Article shall be construed to restrain or prevent the United States  
17 from performing any act required or authorized under federal law, or the State from  
18 otherwise challenging any such act.
- 19 (d) Nothing contained in this Article shall be deemed to give the arbitrator any  
20 authority, power, or right to alter, change, amend, add to, or subtract from any of the  
21 provisions of this Contract. Nothing in this Article shall be construed as a delegation of  
22 authority by the United States.

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

3

4

5 9. METHOD FOR ESTABLISHING BLOCKS FOR PROJECT DELIVERY AND  
6 REPAYMENT

7  
8 (a) When the Project Works defined in Article 2(a) are completed, tested, and the  
9 Project becomes available for use by the State, the United States shall, after consultation,  
10 give the State written notice, referred to herein as the "block notice". The block notice  
11 shall contain:

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

16 (b) If a Remaining Repayment Obligation has been assigned pro rata to a quantity  
17 of the State's Project interest pursuant to Article 7(g) herein, then the block notice  
18 establishing the availability of that water supply will also contain:

- 19 (1) A designation of that part of the State's municipal and industrial cost  
20 allocation apportioned to the block.  
21 (2) A payment schedule for repayment of those costs, including a breakdown of  
22 the amount and due date of each payment to be paid by the State.

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

24

25 10. PAYMENT OF OPERATION, MAINTENANCE, AND REPLACEMENT COSTS

**Comment [BOR12]:** Could change based upon language pertaining to Maximum Percentage verbiage from Reclamation ML.

08/10/11 – Further discussions will be based upon amount of water purchased.

**Comment [BOR13]:** Consider title to be Method of Incremental Payment 012012

ML to provide language 012012

**Comment [BOR14]:** Consider absorbing this language into Article 7 012012

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

- 3 (1) Fixed OM&R costs, as defined in the Intergovernmental Agreement. The  
4 State's share of total fixed OM&R costs will be as agreed to by the State and  
5 the Association. The final allocation of Fixed OM&R costs will be finalized  
6 and stated in the OM&R Contract between Reclamation and the Association,  
7 which transfers OM&R responsibility to the Association;
- 8 (2) Variable OM&R costs, which are actual costs of replacing Project Water  
9 released by request of the State, are further defined in the Intergovernmental  
10 Agreement;
- 11 (3) provided, however, that the Intergovernmental Agreement contains  
12 provisions for a Variable OM&R fund, designed to pay all or part of the  
13 Project Variable OM&R costs.

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

- 16 (1) While the Intergovernmental Agreement is in effect, the Project Operator  
17 shall annually prepare an OM&R charge notice which shall be furnished to the  
18 Association and to the State, which the State shall pay in advance annually.
- 19 (2) If the Intergovernmental Agreement is voided or is otherwise terminated, the  
20 State agrees to pay the Project Operator, in advance, its share of OM&R costs  
21 associated with said Project Works. An OM&R charge notice shall be  
22 furnished annually by the Project Operator, which will be paid by the State in  
23 advance annually.

1 (3) If the funds advanced by the State under this Article are less than the actual  
2 cost of OM&R properly chargeable to the State for the period advance, a  
3 supplemental notice will be issued and the State shall advance such additional  
4 funds by the date specified in the supplemental notice. If the actual costs are  
5 less than the funds advanced, an appropriate adjustment will be made in the  
6 notice issued the next succeeding period.

7 (c) If the Intergovernmental Agreement is voided or is otherwise terminated, the  
8 State's OM&R allocation will be comprised of:

9 (1) the State's pro-rata share of OM&R costs actually incurred by the Project  
10 Operator in connection with Project facilities and/or operations that benefit all  
11 users of the Project, based on the amount of water storage actually purchased  
12 and paid for by the State, in accordance with Article 7 above;

13 (2) the actual cost of replacing Project Water released by request of the State.  
14

15 11. USE AND DISPOSAL OF WATER DURING CONSTRUCTION

16 (a) During construction, Project Water that is not made available to the State under  
17 a block notice as provided in Article 9 herein may be disposed of by the United States at  
18 terms and charges fixed by the United States. The charges shall only be sufficient to  
19 cover the operation, maintenance, and replacement costs appropriate for such water  
20 delivery. Payment for use of such water shall be in advance and the proceeds shall be  
21 applied to operation and maintenance expense and other appropriate accounts as  
22 determined by the United States, and shall accrue to the benefit of the United States. The

1 State shall, however, have the first opportunity to purchase said Project Water paying  
2 only the applicable OM&R costs.

3

4 12. WATER SHORTAGES

5 There may occur at times during any year a shortage in the quantity of water  
6 available for furnishing to the State through and by means of the Project, but in no event  
7 shall any liability accrue against the United States or any of its officers, agents, or  
8 employees for any damage, direct or indirect, arising from a shortage, on account of any  
9 cause beyond the control of the Contracting Officer, including but not limited to, drought,  
10 failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot,  
11 insurrection, civil disturbance, labor disturbance, sabotage, zombie attack, and any action  
12 taken to meet legal or regulatory requirements. Unless the Intergovernmental Agreement  
13 is in effect, in any year in which there may occur a shortage caused by those referenced  
14 above, the United States reserves the right to apportion the available water allocation  
15 pursuant to the Settlement Act, as amended, and applicable laws, including the Animas-  
16 La Plata Project Compact, among the State, Colorado Ute Tribes, and others entitled to  
17 receive water from the Project in accordance with conclusive determinations of the  
18 Contracting Officer.

19

20 13. STATE'S OBLIGATIONS FOR APPROPRIATIONS

21 Consistent with **Article** 19 herein, the State intends to fulfill its obligations under  
22 this Contract. The State reasonably believes that funds in amount sufficient to fulfill  
23 these obligations lawfully can and will be available for this purpose. In the event funds

1 are not appropriated in amounts sufficient to fulfill these obligations, the State shall use  
2 its best efforts to satisfy any requirements for payments or contributions of funds under  
3 this contract from any other source of funds legally available for this purpose. Nothing  
4 herein shall constitute, nor be deemed to constitute, an obligation of future appropriations  
5 by the General Assembly of the State of Colorado where creating such an obligation  
6 would be inconsistent with Colorado Revised Statutes or the Colorado Constitution.

7  
8  
9

10 14. COVENANT AGAINST CONTINGENT FEES

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

19

20 15. THIRD-PARTY CONTRACTS

21 (a) Consistent with applicable law, any contract entered into between the State and  
22 any third-party for the use of the State's Statutory Water Allocation under this Contract  
23 will be approved by the United States unless it negatively affects the Project operations,

1 benefits, or authorized purposes or is not in compliance with environmental requirements.

2 Nothing in these third party contracts shall interfere with other contractual, legal,

3 regulatory, or Tribal obligations of the United States. The third party contract will

4 require the third party to be bound to the provisions of this Contract including, but not be

5 limited to, terms of measurement, operations, environmental compliance, and the impact

6 of defaults on Project Works. Approval shall not be unreasonably withheld. The United

7 States shall have 60 days after receipt of the proposed third-party contract to inform the

8 State of its approval or denial of the contract. If additional environmental compliance is

9 required, the State and the United States will develop a schedule for approval.

10 (b) The State shall not receive any valuable consideration for such subcontract in

11 excess of the cost of the water to the State (including administrative costs and water

12 conservation measures pursuant to Article 29). The State shall not extract any brokerage,

13 profits, commission or fee, from any person on the water to be delivered under this

14 subcontract. In connection with any such subcontract, the State shall certify to the United

15 States that the conveyance with respect to water delivery was without consideration

16 except as provided above, and that no brokerage, profits, commission, fee, or other

17 charge of any kind was charged to the subcontractor or any person acting on behalf of the

18 subcontractor. Any exceptions to this Article will be covered under a separate agreement

19 between the State and the United States.

20

21 16. TITLE TO PROJECT WORKS AND PROJECT REPAIR

Comment [BOR15]: State to review further 012012

Comment [BOR16]: SOL Review 012012

Comment [BOR17]: SOL to review with Policy on deletion 012012

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

4

5 17. SEVERABILITY

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

11

12 STANDARD ARTICLES

13 18. CHARGES FOR DELINQUENT PAYMENTS

14

15 (a) The State shall be subject to interest, administrative, and penalty charges on  
16 delinquent payments. If a payment is not received by the due date, the State shall pay an  
17 interest charge on the delinquent payment for each day the payment is 45 days delinquent  
18 beyond the due date. If a payment becomes 60 days delinquent, the State shall pay, in  
19 addition to the interest charge, an administrative charge to cover additional costs of  
20 billing and processing the delinquent payment. If a payment is delinquent 90 days or  
21 more, the State shall pay, in addition to the interest and administrative charges, a penalty  
22 charge for each day the payment is delinquent beyond the due date, based on the  
23 remaining balance of the payment due at the rate of 6 percent per year. The State shall  
24 also pay any fees incurred for debt collection services associated with a delinquent  
25 payment.

26 (b) The interest rate charged shall be the greater of either the rate prescribed  
27 quarterly in the Federal Register by the Department of the Treasury for application to  
28 overdue payments, or the interest rate of 0.5 percent per month, not to exceed 1.0 percent  
29 per month. The interest rate charged will be determined as of the due date and remain  
30 fixed for the duration of the delinquent period.

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

34

Comment [BOR18]: This would meet State requirements.

08/10/11 - Reclamation ML to run by finance folks.  
012012 ML To contact Policy – Ultimately could be a Treasury call.  
012012 State to further discuss with Controller

Comment [BOR19]: Same as above comment.  
08/10/11 CB to provide further review/input  
012012 Same as above

1 19. GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

2  
3 (a) The obligation of the State to pay the United States as provided in this contract  
4 is a general obligation of the State notwithstanding the manner in which the obligation  
5 may be distributed among the State's water users and notwithstanding the default of  
6 individual water users in their obligations to the State.  
7

8 (b) The payment of charges becoming due pursuant to this contract is a condition  
9 precedent to receiving benefits under this contract. The United States shall not make  
10 water available to the State through Animas La Plata project facilities during any period  
11 in which the State is in arrears in the advance payment of any operation and maintenance  
12 charges due the United States or is in arrears for more than 12 months in the payment of  
13 any construction charges due the United States. The State shall not deliver water under  
14 the terms and conditions of this contract for lands or parties that are in arrears in the  
15 advance payment of operation and maintenance charges, or is in arrears more than 12  
16 months in the payment of construction charges as levied or established by the State.  
17

18  
19 20. CONFIRMATION OF CONTRACT

20  
21 Promptly after the execution of this contract, the State shall provide evidence to  
22 the Contracting Officer that, pursuant to the laws of the State of Colorado, the State is a  
23 legally constituted entity and the contract is lawful, valid, and binding on the State. This  
24 contract shall not be binding on the United States until such evidence has been provided  
25 to the Contracting Officer's satisfaction.  
26

27 21. NOTICES

28  
29 Any notice, demand, or request authorized or required by this contract shall be  
30 deemed to have been given, on behalf of the State, when mailed, postage prepaid, or  
31 delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125  
32 South State Street, Room 6107, Salt Lake City, Utah 84138-1102, and on behalf of the  
33 United States, when mailed, postage prepaid, or delivered to the State of Colorado,  
34 Department of Natural Resources, Colorado Water Conservation Board, 1313 Sherman  
35 Street, Room 721, Denver, CO 80203. The designation of the addressee or the address  
36 may be changed by notice given in the same manner as provided in this article for other  
37 notices.  
38

39 22. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

40  
41 The expenditure or advance of any money or the performance of any obligation of  
42 the United States under this contract shall be contingent upon appropriation or allotment  
43 of funds. Absence of federal appropriation or allotment of funds shall not relieve the  
44 State from any obligations under this contract. No liability shall accrue to the United  
45 States in case funds are not appropriated or allotted.  
46

1 23.

OFFICIALS NOT TO BENEFIT

2  
3 No Member of or Delegate to Congress, Resident Commissioner or official of the  
4 State shall benefit from this contract other than as a water user in the same manner as  
5 other water users.

6  
7 24.

CHANGES IN STATE'S ORGANIZATION

Comment [BOR20]: 08/10/11 CB to dig up some language and provide. 012012 ML/CB to discuss with Policy

8  
9 While this contract is in effect, no change may be made in the State's  
10 organization, by inclusion or exclusion of lands or by any other changes which may  
11 affect the respective rights, obligations, privileges, and duties of either the United States  
12 or the State under this contract including, but not limited to, dissolution, consolidation, or  
13 merger, except upon the Contracting Officer's written consent.

14  
15  
16 25.

ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

17  
18 The provisions of this contract shall apply to and bind the successors and assigns  
19 of the parties hereto, but no assignment or transfer of this contract or any right or interest  
20 therein by either party shall be valid until approved in writing by the other party.

21  
22  
23 26.

BOOKS, RECORDS, AND REPORTS

24  
25 The State shall establish and maintain accounts and other books and records  
26 pertaining to administration of the terms and conditions of this contract, including the  
27 State's financial transactions; water supply data; project operation, maintenance, and  
28 replacement logs; project land and rights-of-way use agreements; the water users' land-  
29 use (crop census), land-ownership, land-leasing, and water-use data; and other matters  
30 that the Contracting Officer may require. Reports shall be furnished to the Contracting  
31 Officer in such form and on such date or dates as the Contracting Officer may require.  
32 Subject to applicable Federal laws and regulations, each party to this contract shall have  
33 the right during office hours to examine and make copies of the other party's books and  
34 records relating to matters covered by this contract.

35  
36  
37 27.

RULES, REGULATIONS, AND DETERMINATIONS

38  
39 (a) The parties agree that the delivery of water or the use of Federal facilities  
40 pursuant to this contract is subject to Federal reclamation law, as amended and  
41 supplemented, and the rules and regulations promulgated by the Secretary of the Interior  
42 under Federal reclamation law.

43 (b) The Contracting Officer shall have the right to make determinations necessary to  
44 administer this contract that are consistent with its provisions, the laws of the United  
45 States and the State of Colorado, and the rules and regulations promulgated by the

1 Secretary of the Interior. Such determinations shall be made in consultation with the  
2 State.

3  
4  
5 28. PROTECTION OF WATER AND AIR QUALITY

6  
7 (a) Project facilities used to make available and deliver water to the State shall be  
8 operated and maintained in the most practical manner to maintain the quality of the water  
9 at the highest level possible as determined by the Contracting Officer: *Provided, That* the  
10 United States does not warrant the quality of the water delivered to the State and is under  
11 no obligation to furnish or construct water treatment facilities to maintain or improve the  
12 quality of water delivered to the State.

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

20 (c) This article shall not affect or alter any legal obligations of the Secretary to  
21 provide drainage or other discharge services.

22  
23 29. WATER CONSERVATION

24  
25 Prior to the delivery of water provided from or conveyed through federally  
26 constructed or federally financed facilities pursuant to this contract, the State shall  
27 develop a water conservation plan specific to Project water, as required by subsection  
28 210(b) of the Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation  
29 Rules and Regulations).

30  
31 30. EQUAL EMPLOYMENT OPPORTUNITY

32  
33 During the performance of this contract, the State agrees as follows:

34  
35 (a) The State will not discriminate against any employee or applicant for  
36 employment because of race, color, religion, sex, disability, or national origin. The State  
37 will take affirmative action to ensure that applicants are employed, and that employees  
38 are treated during employment, without regard to their race, color, religion, sex,  
39 disability, or national origin. Such action shall include, but not be limited to the  
40 following: employment, upgrading, demotion, or transfer; recruitment or recruitment  
41 advertising; layoff or termination; rates of pay or other forms of compensation; and  
42 selection for training, including apprenticeship. The State agrees to post in conspicuous  
43 places, available to employees and applicants for employment, notices to be provided by  
44 the Contracting Officer setting forth the provisions of this nondiscrimination clause.  
45

1 (b) The State will, in all solicitations or advertisements for employees placed by or  
2 on behalf of the State, state that all qualified applicants will receive consideration for  
3 employment without regard to race, color, religion, sex, disability, or national origin.

4 (c) The State will send to each labor union or representative of workers with which  
5 it has a collective bargaining agreement or other contract or understanding, a notice, to be  
6 provided by the Contracting Officer, advising the labor union or workers' representative  
7 of the State's commitments under section 202 of Executive Order 11246 of September  
8 24, 1965 (EO 11246), and shall post copies of the notice in conspicuous places available  
9 to employees and applicants for employment.

10  
11 (d) The State will comply with all provisions of EO 11246, and of the rules,  
12 regulations, and relevant orders of the Secretary of Labor.

13  
14 (e) The State will furnish all information and reports required by EO 11246, and by  
15 the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will  
16 permit access to his books, records, and accounts by the Contracting Agency and the  
17 Secretary of Labor for purposes of investigation to ascertain compliance with such rules,  
18 regulations, and orders.

19  
20 (f) In the event of the State's noncompliance with the nondiscrimination clauses of  
21 this contract or with any of such rules, regulations, or orders, this contract may be  
22 canceled, terminated or suspended in whole or in part and the State may be declared  
23 ineligible for further Government contracts in accordance with procedures authorized in  
24 EO 11246, and such other sanctions may be imposed and remedies invoked as provided  
25 in EO 11246 or by rule, regulation, or order of the Secretary of Labor, or as otherwise  
26 provided by law.

27  
28 (g) The State will include the provisions of paragraphs (1) through (7) in every  
29 subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
30 Secretary of Labor issued pursuant to section 204 of EO 11246, so that such provisions  
31 will be binding upon each subcontractor or vendor. The State will take such action with  
32 respect to any subcontract or purchase order as may be directed by the Secretary of Labor  
33 as a means of enforcing such provisions, including sanctions for noncompliance:  
34 *Provided, however,* that in the event the State becomes involved in, or is threatened with,  
35 litigation with a subcontractor or vendor as a result of such direction, the State may  
36 request that the United States enter into such litigation to protect the interests of the  
37 United States.

38  
39 31. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

40  
41 (a) The State shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L.  
42 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as  
43 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135,  
44 Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of  
45 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights

1 laws, and with the applicable implementing regulations and any guidelines imposed by  
2 the U.S. Department of the Interior and/or Bureau of Reclamation.

3  
4 (b) These statutes prohibit any person in the United States from being excluded  
5 from participation in, being denied the benefits of, or being otherwise subjected to  
6 discrimination under any program or activity receiving financial assistance from the  
7 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age.  
8 By executing this contract, the State agrees to immediately take any measures necessary  
9 to implement this obligation, including permitting officials of the United States to inspect  
10 premises, programs, and documents.

11  
12 (c) The State makes this agreement in consideration of and for the purpose of  
13 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal  
14 financial assistance extended after the date hereof to the State by the Bureau of  
15 Reclamation, including installment payments after such date on account of arrangements  
16 for Federal financial assistance which were approved before such date. The State  
17 recognizes and agrees that such Federal assistance will be extended in reliance on the  
18 representations and agreements made in this article and that the United States reserves the  
19 right to seek judicial enforcement thereof.

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

22  
23  
24 32. MEDIUM FOR TRANSMITTING PAYMENTS

25  
26 (a) All payments from the State to the United States under this contract shall be by  
27 the medium requested by the United States on or before the date payment is due. The  
28 required method of payment may include checks, wire transfers, or other types of  
29 payment specified by the United States.

30  
31 (b) Upon execution of the contract, the State shall furnish the Contracting Officer  
32 with the State's taxpayer's identification number (TIN). The purpose for requiring the  
33 State's TIN is for collecting and reporting any delinquent amounts arising out of the  
34 State's relationship with the United States.

35  
36  
37 33. CONTRACT DRAFTING CONSIDERATIONS

38  
39 This Contract has been, negotiated and reviewed by the parties hereto, each of  
40 whom is sophisticated in the matters to which this Contract pertains. Articles 1 through  
41 17 of this Contract have been drafted, negotiated, and reviewed by the parties, and no one  
42 party shall be considered to have drafted the stated articles.

43  
44  
45 34. CONSTRAINTS ON AVAILABILITY OF WATER

1 (a) In its operation of the Project, the Contracting Officer will use all reasonable  
2 means to guard against a condition of shortage in the quantity of water to be made  
3 available to the State pursuant to this Contract. In the event the Contracting Officer  
4 determines that a condition of shortage appears probable, the Contracting Officer will  
5 notify the State of said determination as soon as practicable.  
6

7 (b) If there is a condition of shortage because of errors in physical operations of the  
8 Project, drought, other physical causes beyond the control of the Contracting Officer or  
9 actions taken by the Contracting Officer to meet current and future legal obligations, then  
10 no liability shall accrue against the United States or any of its officers, agents, or  
11 employees for any damage, direct or indirect, arising therefrom.  
12

13  
14  
15  
16  
17  
18

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

Approved: THE UNITED STATES OF AMERICA

\_\_\_\_\_  
Solicitor's Office  
By: \_\_\_\_\_  
Regional Director  
Upper Colorado Region  
Bureau of Reclamation

Legal Review STATE OF COLORADO  
John W. Suthers, Attorney General John W. Hickenlooper, Governor  
Mike King, Executive Director, Department  
of Natural Resources

By: \_\_\_\_\_ By: \_\_\_\_\_  
Assistant Attorney General Jennifer Gimbel, Director, Colorado Water  
Conservation Board

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated by the State Controller or delegate.

State Controller  
David J. McDermott, CPA

By: \_\_\_\_\_  
Date: \_\_\_\_\_

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

