

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
KERN PROJECT, CALIFORNIA

CONTRACT BETWEEN THE UNITED STATES OF AMERICA,
NORTH KERN WATER STORAGE DISTRICT AND
BUENA VISTA WATER STORAGE DISTRICT
PROVIDING FOR THE REPAYMENT OF FUNDS EXPENDED
FOR FEDERALLY PERFORMED ISABELLA DAM SAFETY MODIFICATION PROJECT

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	EXPLANATORY RECITALS	1
	DEFINITIONS	2
	TERM OF THE CONTRACT	3
	SAFETY OF DAMS MODIFICATIONS	4
	REPAYMENT OBLIGATION-TERMS OF REPAYMENT	5
	TITLE TO REMAIN IN THE UNITED STATES	6
	CHARGES FOR DELINQUENT PAYMENTS	6
	GENERAL OBLIGATION-BENEFITS CONDITIONED UPON REPAYMENT	7
	CONFIRMATION OF CONTRACT	7
	CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS	8
	OFFICIALS NOT TO BENEFIT	8
	ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED	8
	BOOKS, RECORDS, AND REPORTS	8
	DETERMINATIONS	9
	NOTICES	9
	CONTRACT FOR DRAFTING CONSIDERATIONS	10
	EXHIBIT A	1
	EXHIBIT B	2

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18 [2nd] WHEREAS, both WRDA and the SOD Act provides that fifteen percent (15%) of
19 the costs incurred as the result of the new hydrologic or seismic data or changes in state-of-the-
20 art design or construction criteria deemed necessary for safety purposes shall be
21 reimbursed/recovered and allocated to the authorized purposes of the structure; and

22 [3rd] WHEREAS, the original construction irrigation storage allocation has been
23 identified in Contract No. 14-06-200-1360A between the United States and the Contractors and
24 is twenty-one and seven tenths percent (21.7%). This SOD Act Contract will utilize the same
25 irrigation storage allocation. Therefore, 21.7% of the fifteen percent (15%) of the total cost of
26 the Reclamation SOD Act modification for the Isabella Dam facilities is reimbursable pursuant
27 to this Contract. The Isabella Dam projected cost estimate is six hundred forty-one million
28 dollars (\$641,000,000.00); and

29 [4th] WHEREAS, the United States and the Contractors agree that this Contract does
30 not amend, modify or otherwise alter Contract No. 14-06-200-1360A between the United States
31 and North Kern Water Storage District, Buena Vista Water Storage District, Tulare Lake Basin
32 Water Storage District, and Hacienda Water District, dated October 23, 1964, as amended.

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

35 DEFINITIONS

36 1. When used herein unless otherwise distinctly expressed, or manifestly incompatible
37 with the intent of the parties as expressed in this Contract, the term:

38 (a) "Contracting Officer" shall mean the Secretary of the Interior's duly
39 authorized representative acting pursuant to this Contract or applicable Reclamation law or
40 regulation;

41 (b) "Project Cost" shall mean all costs incurred by the United States in
42 accordance with the terms of this Contract directly related to the Safety of Dams modification of
43 Isabella facilities. Subject to the provisions of this Contract, the term shall include, but is not
44 necessarily limited to engineering and design costs, construction costs, and project closeout
45 costs. The term does not include any costs for operation, maintenance, repair, replacement, or
46 rehabilitation;

47 (c) "Project Works" and "Project" shall mean the Isabella Reservoir and
48 appurtenant facilities;

49 (d) "Repayment Obligation" shall mean the amount to be repaid by the
50 Contractors that is equal to twenty-one and seven tenths percent (21.7%) of the fifteen percent
51 (15%) of the SOD Modification Work;

52 (e) "SOD Modification Work" shall mean the work to be performed as described
53 in Article 3 of this Contract;

54 (f) "Substantially Complete" shall mean the date when the United States has
55 determined that a majority of the SOD Modification Work has been completed, and that the dam
56 safety risk had been reduced to an acceptable level.

57 TERM OF THE CONTRACT

58 2. This Contract shall become effective on the date first written above and shall remain
59 in effect for a term of 50 years from the date that the SOD Modification Work was deemed
60 Substantially Complete, or until the Contractors have fully repaid to the United States the Project
61 Cost described in Article 4(a) associated with the SOD Modification Work for the Project.

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SAFETY OF DAMS MODIFICATIONS

3 (a). The United States will finance and perform all appropriate construction of the SOD Modification Work. The SOD Modification Work currently includes, but is not necessarily limited to, the following activities:

- (1) Main dam full height filter and drain (with approximately 16-foot crest raise); and
- (2) Retrofit of main dam control tower for access with raised dam; and
- (3) Improvements to existing spillway; and
- (4) Construction of an approximately 900-foot-wide emergency spillway; and
- (5) Auxiliary dam modifications, with approximately 16-foot crest raise, approximately 80-foot wide (crest width) downstream buttress, and shallow foundation treatment; and
- (6) Demolition of the auxiliary dam control tower; and
- (7) Relocation of state highway routes 155 to accommodate the dam crest raises; and
- (8) Acquiring the Borel Canal easement and decommissioning of the Borel Canal and Outlet Works.

(b) The Contracting Officer will provide the Contractors with a quarterly report covering: construction status, specifications conformance, progress of work, and accounting analyses of SOD Modification Work expenditures when such reports and analyses are received from the USACE.

84 (c) The Contracting Officer will provide the Contractors with a draft Project Cost
85 report for the Project after the SOD Modification Work is deemed Substantially Complete, and
86 after a draft of the report is received from the USACE. The Contractors shall have 120 days
87 from receipt of this draft to review and comment. The Contractors shall have access to
88 documentation relating to the Project Costs throughout the 120-day period. The Contracting
89 Officer shall issue the final Project Cost report and final Repayment Obligation after consultation
90 among the Contractors, USACE, and the Contracting Officer.

91 (d) The draft and final Project Cost reports will address any supplemental
92 funding available to the USACE obligated to the Project and whether such funding affects the
93 final Repayment Obligation.

94 (e) The Contractors, either one or both, may appeal the Contracting Officers
95 decision on the final Project Cost report and final total Repayment Obligation to the Contracting
96 Officer, who shall make the final administrative agency determination. The Contracting
97 Officer's final Project Cost report, final total Repayment Obligation, and the annual irrigation
98 repayment schedules shall take effect during the pendency of any appeal. If the Contractors'
99 appeal is successful, any resultant adjustments shall be credited to the annual payments.

100 REPAYMENT OBLIGATION-TERMS OF REPAYMENT

101 4. (a) The Contractors shall repay to the United States the Repayment Obligation
102 described in Article 3 above. The Contracting Officer will notify the Contractors in writing the
103 date on which the Project SOD Act modification is deemed Substantially Complete.

104 (b) The Contractors agree to make annual payments for the repayment of the
105 Repayment Obligation, without interest, beginning October 1, of the next calendar year after the
106 SOD Modification work has been deemed to be Substantially Complete and every year thereafter

107 until the Repayment Obligation has been repaid. North Kern Water Storage District shall pay to
108 the United States its proportionate annual amount identified in Exhibit A, which may be updated
109 without amendment to this contract upon mutual approval of the Contracting Officer and
110 Contractor. Buena Vista Water Storage District shall pay to the United States its proportionate
111 annual amount identified in Exhibit B, which may be updated without amendment to this
112 contract upon mutual approval of the Contracting Officer and Contractor.

113 (c) The Contractors reserve the right to prepay all of any portion of the
114 outstanding Repayment Obligation at any time without penalty.

115 TITLE TO REMAIN IN THE UNITED STATES

116 5. (a) Title to the Isabella Dam Project facilities shall remain in the name of the
117 United States until otherwise provided by the Congress, notwithstanding the full payment of the
118 Contractors' Repayment Obligation under this Contract.

119 (b) The rights and obligations created hereby are supplementary to and do not
120 supersede or affect the rights and obligations under any prior contracts between the United States
121 and the Contractors.

122 CHARGES FOR DELINQUENT PAYMENTS

123 6. (a) The Contractors shall be subject to interest, administrative, and penalty
124 charges on delinquent payments. If a payment is not received by the due date, the Contractors
125 shall pay an interest charge on the delinquent payment for each day the payment is delinquent
126 beyond the due date. If a payment becomes 60 days' delinquent, the Contractors shall pay, in
127 addition to the interest charge, an administrative charge to cover additional costs of billing and
128 processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractors
129 shall pay, in addition to the interest and administrative charges, a penalty charge for each day the

130 payment is delinquent beyond the due date, based on the remaining balance of the payment due
131 at the rate of 6 percent per year. The Contractors shall also pay any fees incurred for debt
132 collection services associated with a delinquent payment.

133 (b) The interest rate charged shall be the greater of either the rate prescribed
134 quarterly in the Federal Register by the Department of the Treasury for application to overdue
135 payments, or the interest rate of 0.5 percent per month. The interest rate charged will be
136 determined as of the due date and remain fixed for the duration of the delinquent period.

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

140 GENERAL OBLIGATION-BENEFITS CONDITIONED UPON REPAYMENT

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

145 (b) The payment of charges becoming due pursuant to this Contract is
146 condition precedent to receiving benefits under this Contract. The United States shall not
147 operate Isabella Dam facilities for the benefit of the Contractors during any period in which the
148 Contractors are in arrears for more than 12 months in the payment of any construction charge
149 due the United States under this Contract.

150 CONFIRMATION OF CONTRACT

151 8. Promptly after the execution of this contract, the Contractors shall provide to the
152 Contracting Officer a certified copy of a final decree of a court of competent jurisdiction in the

153 State of California, confirming the proceedings on the part of the Contractors for the
154 authorization of the execution of this Contract. This contract shall not be binding on the United
155 States until such final decree has been secured.

156 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

162 OFFICIALS NOT TO BENEFIT

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

166 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

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

170 BOOKS, RECORDS, AND REPORTS

171 12. The Contractors shall establish and maintain accounts and other books and records
172 pertaining to administration of the terms and conditions of this Contract, including the
173 Contractors' financial transactions; water supply data; project operation, maintenance, and
174 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
175 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting

176 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
177 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws
178 and regulations, each party to this contract shall have the right during office hours to examine
179 and make copies of the other party's books and records relating to matters covered by this
180 contract.

181 DETERMINATIONS

182 13. The Contracting Officer shall have the right to make determinations necessary to
183 administer this Contract that are consistent with the expressed and implied provisions of this
184 Contract, the laws of the United States and the State of California and the rules and regulations
185 promulgated by the Secretary of the Interior. Such determination shall be made in consultation
186 with the Contractors.

187 NOTICES

188 14. Any notice, demand, or request authorized or required by this Contract shall be
189 deemed to have been given, on behalf of the Contractors, when mailed, postage prepaid, or
190 delivered to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage
191 Way, Sacramento, California 95825-1898, and on behalf of the United States, when mailed,
192 postage prepaid, or delivered to the current manager of the Contractor, as follows:
193 General Manager, North Kern Water Storage District, 33380 Cawelo Avenue, 93308-9575; P.O.
194 Box 81435, Bakersfield, CA 93380-1435 and Buena Vista Water Storage District, Engineer
195 Manager, 525 N. Main Street, P.O. Box 756, Buttonwillow, CA 93206

196 The designation of the addressee or the address may be changed by notice given in the
197 same manner as provided in this article for other notices.

212 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day
213 and year first above written.

214 UNITED STATES OF AMERICA

215 By: _____
216 Regional Director
217 Mid-Pacific Region
218 Bureau of Reclamation

219 NORTH KERN WATER STORAGE DISTRICT

220 (SEAL)

221 By: _____
222 President of the Board of Directors

223 Attest:

224 By: _____
225 Secretary of the Board of Directors

226 BUENA VISTA WATER STORAGE DISTRICT

227 (SEAL)

228 By: _____
229 President of the Board of Directors

230 Attest:

231 By: _____
232 Secretary of the Board of Directors

EXHIBIT A
NORTH KERN WATER STORAGE DISTRICT ANNUAL PAYMENT SCHEDULE

North Kern Water Storage District

68%

The estimated cost for the SOD Modification Work is six hundred forty-one million dollars and zero cents (\$641,000,000.00) of which Contractors are collectively responsible for a proportional share of the total reimbursable cost. Said reimbursable cost is without an interest component. Based on the estimated costs of \$641,000,000.00, the Contractors are responsible for repayment of twenty million eight hundred sixty-four thousand five hundred fifty dollars and zero cents (\$20,864,550.00) ($\$641,000,000.00 \times 21.7\% = \$139,097,000.00 \times 15\% = \$20,864,550.00$). Therefore, North Kern Water Storage District is responsible for the amounts listed below:

North Kern Water Storage District $\$20,864,550.00 \times 68\%$ = $\$14,187,894.00$

North Kern Water Storage District's annual payments based on the above allocated costs are:

October 1, 20__	\$283,757.88
... and thereafter.	

The first payment will become due and payable on October 1 of the next calendar year after the Project has been deemed to be Sustainably Complete. For example: The Project is deemed Sustainably Complete on June 2, 2019. First payment will become due and payable on October 1, 2020.

EXHIBIT B
BUENA VISTA WATER STORAGE DISTRICT
ANNUAL PAYMENT SCHEDULE

Buena Vista Water Storage District 32%

The estimated cost for the SOD Modification Work is six hundred forty-one million dollars and zero cents (\$641,000,000.00) of which Contractors are collectively responsible for a proportional share of the total reimbursable cost. Said reimbursable cost is without an interest component. Based on the estimated costs of \$641,000,000.00, the Contractors are responsible for repayment of twenty million eight hundred sixty-four thousand five hundred fifty dollars and zero cents (\$20,864,550.00) ($\$641,000,000.00 \times 21.7\% = \$139,097,000.00 \times 15\% = \$20,864,550.00$). Therefore, Buena Vista Water Storage District is responsible for the amounts listed below:

Buena Vista Water Storage District $\$20,864,550.00 \times 32\%$ = \$6,676,656.00

Buena Vista Water Storage District's annual payments based on the above allocated costs are:

October 1, 20__ \$133,533.12
October 1, 20__ \$133,533.12
October 1, 20__ \$133,533.12
October 1, 20__ \$133,533.12
... and thereafter.

The first payment will become due and payable on October 1 of the next calendar year after the Project has been deemed to be Sustainably Complete. For example: The Project is deemed Sustainably Complete on June 2, 2019. First payment will become due and payable on October 1, 2020.