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**Permit 21112/Project 184**

Warren Act Contract  
M&I Only  
Contract No. 06-WC-20-3317

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
American River Division, Central Valley Project, California

CONTRACT FOR CONVEYANCE OF NON-PROJECT WATER  
BETWEEN THE UNITED STATES  
AND  
EL DORADO IRRIGATION DISTRICT

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1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
4 American River Division, Central Valley Project, California

5 CONTRACT FOR CONVEYANCE OF NON-PROJECT WATER  
6 BETWEEN THE UNITED STATES  
7 AND  
8 EL DORADO IRRIGATION DISTRICT

9 THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, pursuant  
10 to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto,  
11 including the Act of February 21, 1911 (36 Stat. 925), and Section 305 of the Reclamation  
12 States Emergency Drought Relief Act of 1991, enacted March 5, 1992 (106 Stat. 59), all  
13 collectively hereinafter referred to as the Federal Reclamation laws, between the UNITED  
14 STATES OF AMERICA, hereinafter referred to as the United States, represented by the officer  
15 executing this Contract, hereinafter referred to as the Contracting Officer, and EL DORADO  
16 IRRIGATION DISTRICT, hereinafter referred to as the Contractor;

17 WITNESSETH, That:

18 EXPLANATORY RECITALS

19 [1] WHEREAS, the United States has constructed and is operating the Central  
20 Valley Project (Project), California, for diversion, storage, carriage, distribution and beneficial  
21 use, flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation,  
22 protection and restoration, generation and distribution of electric energy, salinity control,  
23 navigation and other beneficial uses, of waters of the Sacramento River, the American River, the  
24 Trinity River, and the San Joaquin River and their tributaries; and

25           [2]     WHEREAS, the Contractor asserts a right to a Non-Project Water supply  
26 for municipal and industrial (M&I) purposes through its interest in direct diversion rights and  
27 rights for diversion for storage granted in Permit 21112 by the California State Water Resources  
28 Control Board and has requested the United States convey said Non-Project Water through  
29 Excess Capacity in Project Facilities; and

30           [3]     WHEREAS, the United States is willing to convey said Non-Project  
31 Water to the Contractor through Excess Capacity in Project Facilities in accordance with the  
32 terms and conditions of this Contract; and

33           [4]     WHEREAS, the Contractor and Contracting Officer recognize that this  
34 Contract does not grant any permission or entitlement to the Contractor to extract or divert from  
35 its sources the Non-Project Water supply conveyed pursuant to this Contract; and

36           [5]     WHEREAS, the Contracting Officer and the Contractor entered into  
37 Cooperative Agreement No. 05FC201041 for the design and construction of a Temperature  
38 Control Device (TCD) which expired December 31, 2012; and

39           [6]     WHEREAS, the Contracting Officer and the Contractor acknowledge and  
40 agree that the Bureau of Reclamation and the Contractor have entered into Cooperative  
41 Agreement No. R14AC00061 (Cooperative Agreement) and that this Cooperative Agreement  
42 remains in full force and effect as of the effective date of this Contract and is attached to this  
43 Contract as Exhibit D; and

44           [7]     WHEREAS, the United States will consider, in good faith, the  
45 Contractor's requests to execute a new contract upon expiration of this Contract, to the extent  
46 that Excess Capacity in Project Facilities exists at the time of execution of a new contract, and  
47 to the extent that execution of a new contract would not contravene then-applicable law,

48 including but not limited to the Act of February 21, 1911 (36 Stat. 925) and other Federal  
49 Reclamation laws; and

50 [8] WHEREAS, the environmental compliance requirements for the execution  
51 of this Contract have been met by \_\_\_\_\_ (insert date and document  
52 number or title); and

53 NOW, THEREFORE, in consideration of the covenants herein contained, the  
54 parties hereto agree as follows:

55 DEFINITIONS

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

58 (a) "Calendar Year" shall mean the period January 1 through December 31,  
59 both dates inclusive;

60 (b) "Contracting Officer" shall mean the Secretary of the Interior's  
61 (Secretary) duly authorized representative acting pursuant to this Contract or applicable  
62 Reclamation law or regulation;

63 (c) "Contractor's Boundaries" shall mean the geographic area within which  
64 the Contractor is authorized to serve Non-Project Water as set forth on Exhibit A, which may be  
65 modified in accordance with Article 25, without amendment of this Contract;

66 (d) "Contractor's Point of Delivery" shall mean the Folsom Lake Raw Water  
67 Pump Station on the south shore of the Folsom Reservoir or any replacement thereof, and/or any  
68 other additional point or points of delivery as may be mutually agreed to in writing by the  
69 Contracting Officer and the Contractor;

70 (e) “Excess Capacity” shall mean capacity in the Project Facilities in excess  
71 of that needed to meet the Project’s authorized purposes, as determined solely by the Contracting  
72 Officer, which may be made available to convey and deliver Non-Project Water;

73 (f) “Irrigation Water” shall mean Non-Project Water used to irrigate land  
74 primarily for the production of commercial agricultural crops or livestock, and domestic and  
75 other uses that are incidental thereto. It does not include uses such as watering golf courses;  
76 lawns and ornamental shrubbery used in residential and commercial landscaping, household  
77 gardens, parks and other recreational facilities; pasture for animals raised for personal purposes  
78 or for nonagricultural commercial purposes; cemeteries; and similar uses (except to the extent  
79 that some of these uses may be incidental to uses that are primarily agricultural). It also does not  
80 include commercial agricultural uses that do not require irrigation, such as fish farms and  
81 livestock production in confined feeding or brooding operations;

82 (g) “Municipal and Industrial (M&I) Water” shall mean Non-Project Water  
83 used for municipal, industrial, and miscellaneous purposes not falling under the definition of  
84 “Irrigation Water” described in subdivision (f) of this Article 1 or within another category of  
85 water use under an applicable Federal authority;

86 (h) “Non-Project Water” shall mean water acquired by or available to the  
87 Contractor from the source(s) identified in Exhibit C that has not been appropriated or acquired  
88 by the United States;

89 (i) “Project” shall mean the Central Valley Project owned by the United  
90 States and operated by the Department of the Interior, Bureau of Reclamation;

91 (j) “Project Facilities” shall mean the Folsom Reservoir and associated  
92 facilities, constructed as features of the American River Division, Central Valley Project;

93 (k) "Project-Use Power" is that electrical energy, and its associated ancillary  
94 service components, required to provide the full electrical service needed to operate and maintain  
95 Project Facilities, and to provide electric service for Project purposes and loads in conformance  
96 with the Reclamation Project authorization. Project-Use Power is not available to pump  
97 Non-Project Water, to operate pumps that were not built as Federal facilities as part of the  
98 Project, to pump Project Water outside the authorized service area, or provide for on-farm uses;

99 (l) "Project Water" shall mean all water that is developed, diverted, stored, or  
100 delivered by the United States in accordance with the statutes authorizing the Project and in  
101 accordance with the terms and conditions of applicable water rights permits and licenses  
102 acquired by and/or issued to the United States pursuant to California law;

103 (m) "Rates" shall mean the amount to be paid to the United States by the  
104 Contractor, as set forth in Exhibit B, for the use of Excess Capacity in the Project Facilities made  
105 available pursuant to this Contract;

106 (n) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
107 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
108 through any agency of the Department of the Interior;

109 (o) "Water Service Contract" shall mean Contract No. 14-06-200-1357A-LTR1  
110 between the United States and the Contractor, or in any amendment, extension, or renewal  
111 thereof, for a supply of Project Water; and

112 (p) "Year" shall mean the period from and including March 1 of the Calendar  
113 Year through the last day of February of the following Calendar Year.

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TERM OF CONTRACT

2. (a) This Contract shall become effective upon the Contractor’s full performance of Article 26 of this Contract, and shall remain in effect through February 28, 2030, unless terminated by operation of law or by mutual agreement of the parties hereto: *Provided*, That upon 30 days’ advance written notice to the Contractor, this Contract may also be terminated by the Contracting Officer at an earlier date, if the Contracting Officer determines that the Contractor has not been complying with one or more of the terms and conditions of this Contract unless the Contractor can show full compliance or a time schedule for compliance that is satisfactory to the Contracting Officer within the 30-day notice period.

(b) The Contractor shall promptly notify the Contracting Officer if and when the Contractor ceases to have any right to the use of the Non-Project Water being conveyed pursuant to this Contract.

INTRODUCTION, CONVEYANCE, AND DELIVERY OF  
NON-PROJECT WATER

3. (a) During the term of this Contract, the Contractor may introduce up to 17,000 acre-feet of Non-Project Water each Year into the Project Facilities from the source(s) identified in Exhibit C. *Provided, however*, the TCD must be designed and constructed to Reclamation’s satisfaction, and no more than 8,500 acre-feet shall be delivered pursuant to this Contract per Year until the TCD is constructed and operational and the Contractor attains the written approval of the Contracting Officer. *Provided, further*, The quantity of Non-Project Water that will be conveyed to the Contractor will be the outflow of Non-Project Water from bypass flows at the Kyburz Diversion Dam and releases from the El Dorado Powerhouse, minus those conveyance losses identified in Exhibit C, and minus diversions of such water at El Dorado

137 Forebay and Hazel Creek Tunnel. The United States shall convey said water to the Contractor's  
138 Point of Delivery through Excess Capacity in Project Facilities in accordance with a schedule as  
139 required in Article 4(a), or any revision or revisions thereof, submitted by the Contractor and  
140 approved by the Contracting Officer during the term hereof. If at any time the Contracting  
141 Officer determines that there will not be Excess Capacity in Project Facilities sufficient to  
142 receive, transport, and convey the Non-Project Water in accordance with the approved schedule,  
143 the Contracting Officer shall so notify the Contractor in writing. Within 24 hours of said notice,  
144 the Contractor shall revise its schedule accordingly.

145 (a.1) The Contractor, in order to minimize the impacts to CVP operations, will:

146 (i) whenever possible, take delivery of Project Water pursuant to its Water Service Contract  
147 No. 14-06-200-1357A-LTR1 only to the extent that the Contractor's demands cannot be fully  
148 met using available Non-Project Water under this Contract or Contract No. 06-WC-20-3315, or  
149 other available water supplies under water rights held by the Contractor at Folsom Reservoir; and  
150 (ii) provide advance written notice to, and coordinate with, Reclamation regarding any proposed  
151 sales or transfers of Non-Project Water outside of the Contractor's Federal service area.

152 (b) The quantity(ies) of Non-Project Water conveyed to the Contractor  
153 through Project Facilities in any 30-day period shall not exceed the quantity of Non-Project  
154 Water previously introduced into the Project Facilities by the Contractor less the conveyance  
155 loss(es) identified in Exhibit C. The Contractor will be responsible to forgo diversions or to  
156 make releases under its state water rights, and any permits or approvals issued by the California  
157 State Water Resources Control Board relating to those rights, permits, or approvals, to divert the  
158 natural flow of the South Fork American River, its tributaries, and/or from the Contractor's  
159 upstream reservoirs the quantity of water that equals the quantity that the Contractor has

160 scheduled to introduce into Folsom Reservoir, plus the amount(s) of conveyance loss(es)  
161 specified in Exhibit C.

162 (c) Exhibit C may be modified or replaced to reflect any changes to the  
163 source(s) of Non-Project Water or the quantity(ies) of conveyance loss(es), as determined by the  
164 Contracting Officer based on operational history, without amending this Contract. *Provided,*  
165 *however,* That no such modification or replacement shall be approved by the Contracting Officer  
166 absent the completion of all appropriate environmental documentation, including but not limited  
167 to documents prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) and  
168 the Endangered Species Act of 1973 (ESA), as amended.

169 (d) All Non-Project Water conveyed and delivered to the Contractor pursuant  
170 to this Contract shall be used for M&I purposes only.

171 (e) Non-Project Water introduced into the Project Facilities shall be  
172 accounted for on a “first-in, first-out” basis. Non-Project Water that is introduced into the  
173 Project Facilities by the Contractor and remains there for more than 30 days shall be deemed to  
174 be unused water available to the United States for Project purposes. Further, all Non-Project  
175 Water made available for delivery to the Contractor from the Project Facilities and not accepted  
176 by the Contractor shall be deemed to be unused water donated to the United States for Project  
177 purposes. Similarly, Non-Project Water that is introduced into the Project Facilities and remains  
178 there after the expiration of this Contract shall also be deemed unused water available to the  
179 United States for Project purposes.

180 (e.1) In the event it becomes necessary for the Contracting Officer to spill water  
181 from the Project Facilities for flood control or any other purpose, the quantity of water first  
182 spilled shall be deemed to be the Contractor’s Non-Project Water to the extent that such water

183 has been and/or is being introduced into the Project Facilities: *Provided*, That the Contracting  
184 Officer will to the extent possible inform the Contractor by written notice, or otherwise, of  
185 any spill from the Project Facilities: *Provided further*, That to the extent the Contractor has  
186 Non-Project Water being introduced into the Project Facilities after the Contractor has been  
187 informed of a pending spill, such water so introduced shall be delivered to the Contractor at the  
188 Contractor's request to the extent the United States is able to do so as conclusively determined  
189 by the Contracting Officer.

190 (f) The introduction, conveyance, and delivery of Non-Project Water pursuant  
191 to this Contract will not be supported with Project-Use Power. If electrical power is required to  
192 convey or pump the Non-Project Water into, through or from the Project Facilities, the  
193 Contractor shall be responsible for the acquisition and payment of all electrical power and  
194 associated transmission service charges required to pump the Non-Project Water from the  
195 Contractor's Point of Delivery. Nothing within this Contract shall be construed to affect  
196 Contractor's eligibility to enter into future contracts for Western Area Power Authority power  
197 for purposes authorized by the then-current requirements for such power.

198 (f.1) The Contractor acknowledges and agrees that the re-diversion of up to  
199 17,000 acre-feet of Non-Project Water each Year, depending on annual needs of the Contractor,  
200 from Project Facilities may result in decreased power generation by Reclamation. The  
201 Contractor agrees to pay Reclamation for the foregone power resulting from the portion of Non-  
202 Project Water withdrawn from Folsom Reservoir that results in loss of power that would have  
203 otherwise been generated through Reclamation's power plant absent the Contractor's  
204 withdrawal of the Non-Project Water, following the process and schedule and using the formula  
205 provided in Exhibit G. The power costs associated with the re-diversion will be estimated and

206 paid to Reclamation by May 15 of each Year in accordance with Exhibit G and be established by  
207 Letter of Agreement (LOA).

208 (f.2) The Contractor shall have no rights to any benefits from increased power  
209 generation that may result from the conveyance of the Non-Project Water through Excess  
210 Capacity in the Project Facilities authorized pursuant to this Contract.

211 (g) The Contractor shall utilize the Non-Project Water conveyed pursuant to  
212 this Contract in accordance with all requirements of any applicable biological opinion(s) in effect  
213 during the term of this Contract, including but not limited to all biological opinions for the joint  
214 operations of the Project and the State water project.

215 (h) The introduction of Non-Project Water into the Project Facilities by the  
216 Contractor shall be conditioned upon compliance by the Contractor with the environmental  
217 measures described with applicable environmental documentation in effect during the term of  
218 this Contract and with the terms of the applicable operations procedures approved by the  
219 Contracting Officer.

220 (i) All Non-Project Water conveyed to the Contractor pursuant to this  
221 Contract shall be measured and recorded with equipment furnished, installed, operated, and  
222 maintained by the Contractor. Upon request by the Contracting Officer, the Contractor shall  
223 investigate the accuracy of such measurements and shall take all necessary steps to adjust any  
224 errors appearing therein. The Contractor has prepared, in Exhibit E, a gaging plan and schematic  
225 satisfactory to the Contracting Officer and Reclamation's Central Valley Operations Office  
226 (CVO) that contains specific requirements and procedures for water measurement and water  
227 accounting.

228 (i.1) Provided the Contractor develops a TCD at the Contractor's Point of  
 229 Delivery as specified in Article 3(h) , as required by the Cooperative Agreement within one year  
 230 of formal acceptance of the TCD, the Contractor shall develop a standard operating procedure  
 231 (SOP), subject to the approval of the Contracting Officer, to verify and validate the correct  
 232 operation of the TCD in conjunction with Reclamation and its facilities at Folsom Dam for the  
 233 safe and efficient operation to preserve the cold water pool. Using this SOP, the Contractor shall  
 234 submit annually, by May 15, an Operations Plan describing how the Contractor intends to  
 235 operate the TCD at the Contractor's Point of Delivery in order to preserve the cold water pool.  
 236 Each Operations Plan must be approved by the Contracting Officer. Once the TCD is  
 237 constructed and operational, at no time shall the Contractor withdraw water colder than 60  
 238 degrees Fahrenheit while the United States is managing a cold-water pool in Folsom Reservoir  
 239 (which may occur annually April through November, depending upon conditions) unless  
 240 otherwise requested in writing by the Contractor and approved by the Contracting Officer.

241 SCHEDULING AND REPORTING OBLIGATIONS OF THE CONTRACTOR

242 4. (a) On or before March 1 of each Calendar Year, or at such other times as the  
 243 Contracting Officer determines to be necessary, the Contractor shall submit to the Contracting  
 244 Officer a written schedule, satisfactory to the Contracting Officer, showing the dates and  
 245 estimated monthly quantities of all Project Water and Non-Project Water that the Contractor will  
 246 divert from Project Facilities and conveyed by the United States to the Contractor for the  
 247 upcoming Year under all contracts in force between Reclamation and the Contractor. During  
 248 each month, the Contractor will revise said schedule to reflect: (i) the actual quantity(ies) of all  
 249 Non-Project Water introduced into Project Facilities and conveyed by the United States to the  
 250 Contractor; and (ii) the actual quantity(ies) of all Project Water delivered to the Contractor by

251 Reclamation.

252                   (b)     For each month, by the 10th day of the succeeding month, the Contractor  
253 shall furnish a provisional monthly report of daily operations that is satisfactory to the  
254 Contracting Officer that tabulates and quantifies: (i) the Contractor's rights to the natural flow in  
255 the South Fork of the American River and its tributaries; (ii) the quantity of releases from the  
256 Contractor's upstream storage; (iii) the quantity of water outflows from bypass flows at the  
257 Kyburz Diversion Dam and releases from the El Dorado Powerhouse; (iv) the quantity of  
258 Non-Project Water diverted for consumptive purposes at El Dorado Forebay and Hazel Creek  
259 Tunnel; (v) the quantity of Non-Project Water introduced into Project Facilities pursuant to this  
260 Contract; and (vi) the actual daily quantities of Non-Project Water taken by the Contractor at the  
261 Contractor's Point(s) of Delivery. At the same time, the Contractor shall provide the  
262 Contracting Officer with operational reports demonstrating that the Contractor has operated its  
263 upstream reservoirs and other facilities in such a manner as to make sufficient water available in  
264 Project Facilities for subsequent delivery of Non-Project Water to the Contractor pursuant to the  
265 Contractor's direct diversion and re-diversion rights under its State water rights for each month.  
266 By the 15<sup>th</sup> day of the same month the provisional report shall become final unless the  
267 Contractor provides an updated report to the Contracting Officer. The reports to the Contracting  
268 Officer shall be provided in paper and electronic formats approved by the Contracting Officer,  
269 with measurements of water in daily mean cubic feet per second and monthly acre-feet. In  
270 addition, the Contractor shall provide the Contracting Officer with copies of all reports on water  
271 rights, stream flows and diversions that are required during the term of this Contract by the  
272 California State Water Resources Control Board under Permit 21112.

273 (c) The Contractor shall advise the Contracting Officer on or before the 10th  
274 calendar day of each month of the actual daily quantities of Non-Project Water taken during the  
275 previous month by the Contractor at the Contractor's Point(s) of Delivery pursuant to this  
276 Contract.

277 PAYMENTS AND ADJUSTMENTS

278 5. (a) The Rates to be paid to the United States for Non-Project Water conveyed  
279 pursuant to this Contract are set forth in Exhibit B and are subject to annual adjustment pursuant  
280 to the then-current ratesetting policy for the Project to cover all costs incurred from the  
281 conveyance of Non-Project Water.

282 (b) At the beginning of each Calendar Year, the Contracting Officer shall  
283 provide the Contractor with the final Rates to be in effect for the upcoming Year, and such  
284 notification shall revise Exhibit B without amending this Contract.

285 (c) The Contractor shall pay for Non-Project Water conveyed pursuant to this  
286 Contract at the cost-of-service rate as calculated in accordance with the then-current ratesetting  
287 policy for the Project.

288 (d) At the time the Contractor submits an initial schedule for the conveyance  
289 of Non-Project Water pursuant to subdivision (a) of Article 4 of this Contract, the Contractor  
290 shall pay the Contracting Officer one-half of the total amount payable for the Non-Project Water  
291 scheduled to be conveyed for the Year under this Contract. The Contractor shall pay the  
292 remainder of the amount payable for Non-Project Water scheduled to be conveyed for the Year  
293 on or before June 1 of the respective Year. Non-Project Water shall not be conveyed in advance  
294 of payment. Final adjustment between the advance payments for the Non-Project Water  
295 scheduled and payments for the quantities of Non-Project Water conveyed during each Year

296 pursuant to this Contract shall be made as soon as practicable but no later than April 30th of the  
297 following Year.

298 (e) All revenues received from the use of Project Facilities, pursuant to  
299 subdivision (a) of this Article for conveyance of Non-Project M&I Water, shall be deposited into  
300 the Reclamation fund for use under the terms of the Reclamation Act as provided in Section 3 of  
301 the Act of February 21, 1911 (36 Stat. 925): *Provided*, That if the Act of February 21, 1911, is  
302 amended, superseded, or replaced, any new provisions addressing the distribution of revenues  
303 will apply to this Contract at the earliest possible date under the law.

304 (f) No refund shall be made by the United States to the Contractor of the  
305 payments made for conveyance of Non-Project Water introduced into the Project Facilities  
306 which remains therein for more than 30 days as described in subdivision (e) of Article 3.

307 (g) The payment of the Rates set forth in this Article 5 for the use of Excess  
308 Capacity are exclusive of any additional charges that the Contractor may assess its water users.  
309 In accordance with the Act of February 21, 1911 (36 Stat. 925), the Contractor may not impose  
310 on its water users any charge for the use of Excess Capacity that exceeds the total amount paid to  
311 the United States: *Provided*, That the Contractor may also charge its water users such additional  
312 amounts as are necessary to cover the Contractor's reasonable administrative costs in contracting  
313 with the United States for the use of Excess Capacity in the Project Facilities.

314 (h) If at any time the Contractor diverts more Non-Project Water from  
315 Project Facilities than the quantity that was introduced pursuant to subdivision (b) of Article 3 of  
316 this Contract, that additional quantity of Non-Project Water shall be deemed Project M&I Water.  
317 Payment for such Project Water shall be made at the applicable rate identified in the Contractor's  
318 Water Service Contract, and the quantity of such Project Water will be deducted from the

319 quantity of Project Water to which the Contractor is entitled under the Contractor's Water  
320 Service Contract.

321 (i) If the conditions identified in subdivision (h) of this Article arise, and it is  
322 determined by the Contracting Officer that the Contractor has utilized all of its Project Water  
323 available under the Contractor's Water Service Contract, the Contractor shall make available  
324 additional Non-Project Water to be introduced into the Project Facilities which is sufficient to  
325 equal the quantity of water actually used, including the quantity(ies) of conveyance loss(es)  
326 specified in Exhibit C, and shall pay for this additional Non-Project Water at the Rates identified  
327 in Exhibit B.

328 (j) If the Contracting Officer determines the quantity of Non-Project Water  
329 conveyed to the Contractor pursuant to this Contract is less than the quantity for which the  
330 Contractor would otherwise have been required to pay, the amount of any overpayment by the  
331 Contractor shall be applied first to any accrued indebtedness arising out of this Contract then due  
332 and owing to the United States by the Contractor. Any amount of such overpayment then  
333 remaining shall be refunded or credited to the Contractor, as directed by the Contractor.

334 EXCESS CAPACITY

335 6. (a) The availability of Excess Capacity shall be determined solely by the  
336 Contracting Officer. Nothing contained in this Contract shall limit or preclude the United States  
337 from utilizing available capacity in the Project Facilities for the storage and conveyance of  
338 Project Water pursuant to Federal law, Reclamation law or policy, and existing contract(s); or for  
339 using Excess Capacity in the Project Facilities for the storage and conveyance of any other  
340 supplies of Non-Project Water.

341 (b) The Contracting Officer shall not be obligated to convey Non-Project  
342 Water during periods of maintenance or for other operating requirements that make the Non-  
343 Project Water physically unavailable.

344 (c) If at any time the Contracting Officer determines that there will not be  
345 Excess Capacity in the Project Facilities sufficient to allow the Non-Project Water to be  
346 introduced into, conveyed, and delivered in accordance with an approved schedule submitted by  
347 the Contractor, the Contracting Officer shall so notify the Contractor in writing. Within 24 hours  
348 of said notice, the Contractor shall revise its schedule accordingly.

349 (d) No provision of this Contract shall be construed in any way as a basis for  
350 the Contractor to establish a priority to or a permanent right to the use of Excess Capacity in the  
351 Project Facilities nor to set a precedent to obligate the United States to enter into contracts with  
352 any other entities or individuals for the conveyance or storage of Non-Project Water.

353 RECEIPT AND DISTRIBUTION OF NON-PROJECT WATER - SALE, TRANSFER,  
354 OR EXCHANGE OF NON-PROJECT WATER

355 7. (a) The parties hereto acknowledge that this Contract does not grant any  
356 permission or entitlement to the Contractor to extract and/or divert Non-Project Water from the  
357 source(s) described on Exhibit C or to change the nature or place of use of its rights to said Non-  
358 Project Water in any way. It is the responsibility of the Contractor to comply with all applicable  
359 Federal, State, and local laws, rules and regulations, including, but not limited to, State water law  
360 in relation to the Non-Project Water. It is expressly understood by the parties that the  
361 United States is only providing conveyance capacity for the Non-Project Water and does not  
362 claim any interest in the acquisition or use of the Non-Project Water beyond the terms  
363 specifically set forth in this Contract.

364 (b) The Contracting Officer makes no representations as to the accuracy of the  
365 description or of the validity of the Contractor's rights to the Non-Project Water described in  
366 Exhibit C.

367 (c) No sale, transfer, or exchange of Non-Project Water conveyed under this  
368 Contract may take place without the prior written approval of the Contracting Officer.

369 UNITED STATES NOT RESPONSIBLE FOR CONVEYANCE  
370 OF NON-PROJECT WATER

371 8. The United States shall not be responsible for the control, care, or distribution of  
372 the Non-Project Water before it is introduced into Project Facilities and after it is conveyed to the  
373 Contractor's Point(s) of Delivery.

374 UNITED STATES NOT LIABLE

375 9. (a) The United States, its officers, agents and employees, shall not be  
376 responsible for the control, care, or distribution of the Non-Project Water before it is introduced  
377 into or diverted from the Project Facilities. It is specifically understood by the parties hereto that  
378 the United States is only providing conveyance capacity for the Non-Project Water and does not  
379 claim any interest in the acquisition or use of the Non-Project Water beyond the terms  
380 specifically set forth in this Contract.

381 (b) The Contractor shall indemnify and hold the United States and its officers,  
382 agents, and employees harmless from legal liability for every claim for damages of any nature  
383 whatsoever arising out of any action or omissions of the Contractor, its officers, agents and  
384 employees, resulting from the Contractor's performance of this Contract, including the manner  
385 or method in which the Non-Project Water identified in Exhibit C is introduced into and diverted  
386 from the Project Facilities. The Contractor further releases the United States, its officers, agents,

387 and employees from every claim for damage to persons or property, direct or indirect, resulting  
388 from the Contracting Officer's: (i) determinations of the amount of Excess Capacity available in  
389 Project Facilities for the conveyance of Non-Project Water to the Contractor; (ii) determination  
390 that the introduction of Non-Project Water into the Project Facilities must be terminated; and (iii)  
391 elimination from Exhibit C of any source(s) of Non-Project Water. Nothing contained in this  
392 Article shall be construed as an assumption of liability by the Contractor with respect to such  
393 matters.

394 OPINIONS AND DETERMINATIONS

395 10. (a) Where the terms of this Contract provide for actions to be based upon the  
396 opinion or determination of either party to this Contract, said terms shall not be construed as  
397 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
398 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly  
399 reserve the right to relief from and appropriate adjustment for any such arbitrary, capricious, or  
400 unreasonable opinion or determination. Each opinion or determination by either party shall be  
401 provided in a timely manner: *Provided*, That nothing in this subdivision (a) of this Article is  
402 intended to or shall affect or alter the standard of judicial review applicable under Federal law to  
403 any opinion or determination implementing a specific provision of Federal law embodied in  
404 statute or regulation.

405 (b) The Contracting Officer shall have the right to make determinations  
406 necessary to administer this Contract that are consistent with the provisions of this Contract, the  
407 laws of the United States and the State of California, and the rules and regulations promulgated  
408 by the Secretary. Such determinations shall be made in consultation with the Contractor to the  
409 extent reasonably practicable.

410 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

411 11. In addition to all other payments to be made by the Contractor pursuant to this  
412 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and  
413 detailed statement submitted by the Contracting Officer to the Contractor, for such specific items  
414 of direct cost incurred by the United States for work requested by the Contractor associated with  
415 this Contract plus indirect costs in accordance with applicable Reclamation policy and  
416 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in  
417 writing in advance by the Contractor. This Article shall not apply to costs for routine Contract  
418 administration.

419 WATER CONSERVATION

420 12. (a) Prior to the delivery of water provided from or conveyed through federally  
421 constructed or federally financed facilities pursuant to this Contract, the Contractor shall develop  
422 a water conservation plan, as required by Section 210(b) of the Reclamation Reform Act of 1982  
423 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

424 (b) The parties hereto acknowledge and agree that the water conservation plan  
425 the Contractor is currently implementing is satisfactory and has been approved by the  
426 Contracting Officer. Said water conservation plan shall be deemed to meet the requirements of  
427 subdivision (a) of this Article. Said water conservation plan shall be reviewed every 5 years and  
428 revised, as necessary, as determined by the Contracting Officer: *Provided*, That the Contractor,  
429 prior to the execution of this Contract, documents to the satisfaction of the Contracting Officer  
430 that the quantity of Non-Project Water to be conveyed pursuant to this Contract has been  
431 included into its approved water conservation plan and that all Non-Project Water shall be  
432 subject to such water conservation requirements.

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MEDIUM FOR TRANSMITTING PAYMENTS

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

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

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CHARGES FOR DELINQUENT PAYMENTS

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14. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor 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, the Contractor shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor shall pay, in addition to the interest and administrative charges, 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 Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

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(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.

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(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.

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PROTECTION OF WATER AND AIR QUALITY

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15. (a) Project Facilities used to make available and deliver water to the Contractor 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 Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

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(b) The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States and the State of California; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the

470 delivery of water by the Contractor; and shall be responsible for compliance with all Federal,  
471 State, and local water quality standards applicable to surface and subsurface drainage and/or  
472 discharges generated through the use of Federal or Contractor facilities or Project Water  
473 provided by the Contractor within the Contractor's Project Water Service Area.

474 (b.1) The Contracting Officer has included the Project 184 Water Quality  
475 Monitoring Plan Version 3.0 dated March 8, 2007 (Plan) as Exhibit F of this Contract. This Plan  
476 will serve as a baseline water quality monitoring plan that will be compared to water quality  
477 monitoring results to aid Reclamation in determining that the Contractor's Non-Project Water  
478 entering Project Facilities does not degrade the quality of Project Water. This baseline Plan will  
479 comply with the rules and regulations as noted in subparagraph (b) above. If the Plan is  
480 modified in future years as contemplated within the Plan, at a minimum water quality monitoring  
481 data shall be collected at the monitoring station located at the South Fork American River  
482 downstream of the Kyburz Diversion Dam once bi-annually during midsummer and a report  
483 documenting the monitoring results shall be sent to Reclamation within 30 days of preparation.  
484 If at any time during the term of the Contract the Non-Project Water delivered by the Contractor  
485 does not meet those standards as established by the Plan or has the potential to significantly  
486 degrade the quality of Project Water based upon the results at the monitoring station located at  
487 the South Fork American River downstream of the Kyburz Diversion Dam, the Contractor will  
488 immediately provide written notification to Reclamation as specified in Article 14(d) below.  
489 Reclamation has reviewed the water quality monitoring reports for monitoring conducted in 2008  
490 and 2010 pursuant to the Plan and has concluded that this type of data is sufficient for  
491 Reclamation to determine that the quality of Non-Project Water entering Project Facilities does  
492 not degrade the quality of Project Water. The Contracting Officer reserves the right to request  
493 additional reasonable water quality monitoring if the Contracting Officer reasonably determines

494 that significant changes upstream of the monitoring station located at the South Fork American  
495 River downstream of the Kyburz Diversion Dam, such as changes in mining operations,  
496 regulatory requirements, land use changes, or any other actions that have the potential to impact  
497 the quality of the Non-Project Water that is introduced into Project Facilities.

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

500 (d) The Non-Project Water introduced into the Project Facilities shall be of  
501 such quality, as determined solely by the Contracting Officer, as to not significantly degrade the  
502 quality of the Project Water in the Project Facilities. If it is determined by the Contracting  
503 Officer that the quality of the Non-Project Water, identified in Exhibit C, will significantly  
504 degrade the quality of Project Water in the Project Facilities, the Contractor, upon receipt of  
505 electronic written notice from the Contracting Officer, shall immediately take any and all  
506 reasonable action(s) within the Contractor's authority and control, to eliminate the source of such  
507 degradation. If, due to an unexpected event, the quality of the Non-Project Water is adversely  
508 impacted, the Contractor shall immediately: (i) inform the Contracting Officer and the CVO of  
509 Reclamation in Sacramento, California by electronic means of the adverse condition(s)  
510 impacting the quality of the Non-Project Water; (ii) take all necessary steps to mitigate the  
511 adverse condition(s); (iii) conduct any and all appropriate monitoring of the source of the water  
512 quality degradation and shall report monitoring results to the Contracting Officer and to CVO  
513 immediately upon receipt of such results; and (iv) take all reasonable steps to terminate the  
514 introduction of the adversely impacted Non-Project Water into the Project Facilities. If the  
515 source of such degradation is beyond the authority and control of the Contractor, the Contractor  
516 shall promptly notify the Contracting Officer in electronic writing of the cause of such

517 degradation and report all available monitoring results from local, state, and Federal agencies  
518 with authority over such activity to the Contracting Officer and CVO. The Contractor will  
519 continue to monitor and mitigate such adverse events until such time as the Contracting Officer  
520 determines that the quality of the Non-Project Water will no longer significantly degrade the  
521 quality of Project Water in the Project Facilities and notifies the Contractor of such fact in  
522 writing.

523 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

524 16. (a) The obligation of the Contractor to pay the United States as provided in  
525 this Contract is a general obligation of the Contractor notwithstanding the manner in which the  
526 obligation may be distributed among the Contractor's water users and notwithstanding the default  
527 of individual water users in their obligation to the Contractor.

528 (b) The payment of charges becoming due pursuant to this Contract is a  
529 condition precedent to receiving benefits under this Contract. The United States shall not make  
530 water available to the Contractor through Project Facilities during any period in which the  
531 Contractor is in arrears in the advance payment of water Rates due the United States. The  
532 Contractor shall not deliver water under the terms and conditions of this Contract for lands or  
533 parties that are in arrears in the advance payment of water Rates as levied or established by the  
534 Contractor.

535 RULES, REGULATIONS, AND DETERMINATIONS

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

539 (b) The Contracting Officer shall have the right to make determinations  
540 necessary to administer this Contract that are consistent with its expressed and implied  
541 provisions, the laws of the United States and the State of California, and the rules and regulations  
542 promulgated by the Secretary of the Interior. Such determinations shall be made in consultation  
543 with the Contractor.

544 EQUAL EMPLOYMENT OPPORTUNITY

545 18. During the performance of this Contract, the Contractor agrees as follows:

546 (a) The Contractor will not discriminate against any employee or applicant for  
547 employment because of race, color, religion, sex, disability, or national origin. The Contractor  
548 will take affirmative action to ensure that applicants are employed, and that employees are

549 treated during employment, without regard to their race, color, religion, sex, disability, or  
550 national origin. Such action shall include, but not be limited to the following: employment  
551 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination;  
552 rates of pay or other forms of compensation; and selection for training, including apprenticeship.  
553 The Contractor agrees to post in conspicuous places, available to employees and applicants for  
554 employment, notices to be provided by the Contracting Officer setting forth the provisions of this  
555 nondiscrimination clause.

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

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

566 (d) The Contractor will comply with all provisions of EO 11246, and of the  
567 rules, regulations, and relevant orders of the Secretary of Labor.

568 (e) The Contractor will furnish all information and reports required by  
569 EO 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant  
570 thereto, and will permit access to its books, records, and accounts by the Contracting Agency and  
571 the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,  
572 regulations, and orders.

573 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
574 clauses of this Contract or with any of the such rules, regulations, or orders, this Contract may be  
575 canceled, terminated or suspended in whole or in part and the Contractor may be declared  
576 ineligible for further Government contracts in accordance with procedures authorized in EO 11246,  
577 and such other sanctions may be imposed and remedies invoked as provided in EO 11246 or by  
578 rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

579 (g) The Contractor will include the provisions of paragraphs (a) through (g) in  
580 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
581 Secretary of Labor issued pursuant to Section 204 of EO 11246, so that such provisions will be  
582 binding upon each subcontractor or vendor. The Contractor will take such action with respect to  
583 any subcontract or purchase order as may be directed by the Secretary of Labor as a means of  
584 enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in  
585 the event the Contractor becomes involved in, or is threatened with, litigation with a  
586 subcontractor or vendor as a result of such direction, the Contractor may request that the United  
587 States enter into such litigation to protect the interests of the United States.

588

BOOKS, RECORDS AND REPORTS

589           19.   (a)    The Contractor shall establish and maintain accounts and other books and  
590 records pertaining to administration of the terms and conditions of this Contract, including the  
591 Contractor's financial transactions; water supply data; project operation, maintenance, and  
592 replacement logs; project land and rights-of-way use agreements; the water users' land-use  
593 (crop census), land-ownership, land-leasing, and water-use data; and other matters that the  
594 Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such  
595 form and on such date or dates as the Contracting Officer may require. Subject to applicable  
596 Federal laws and regulations, each party to this Contract shall have the right during office hours  
597 to examine and make copies of the other party's books and records relating to matters covered by  
598 this Contract.

599                   (b)    Notwithstanding the provisions of subdivision (a) of this Article, no  
600 books, records, or other information shall be requested from the Contractor by the Contracting  
601 Officer unless such books, records, or information are reasonably related to the administration or  
602 performance of this Contract. Any such request shall allow the Contractor a reasonable period of  
603 time within which to provide the requested books, records, or information.

604                   CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

605           20.    The expenditure or advance of any money or the performance of any obligation of  
606 the United States under this Contract shall be contingent upon appropriation or allotment of  
607 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
608 obligations under this Contract. No liability shall accrue to the United States in case funds are  
609 not appropriated or allotted.

610                   ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

614                   OFFICIALS NOT TO BENEFIT

615           22.    No Member of or Delegate to the Congress, Resident Commissioner, or official of  
616 the Contractor shall benefit from this Contract other than as a water user or landowner in the  
617 same manner as other water users or landowners.

618

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

619 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
620 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as  
621 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title  
622 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.  
623 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the  
624 applicable implementing regulations and any guidelines imposed by the United States  
625 Department of the Interior and/or Bureau of Reclamation.

626 (b) These statutes prohibit any person in the United States from being  
627 excluded from participation in, being denied the benefits of, or being otherwise subjected to  
628 discrimination under any program or activity receiving financial assistance from the Bureau of  
629 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this  
630 Contract, the Contractor agrees to immediately take any measures necessary to implement this  
631 obligation, including permitting officials of the United States to inspect premises, programs, and  
632 documents.

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

641 (d) Complaints of discrimination against the Contractor shall be investigated  
642 by the Contracting Officer’s Office of Civil Rights.

643 CERTIFICATION OF NONSEGREGATED FACILITIES

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

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

664 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR  
665 CERTIFICATIONS OF NONSEGREGATED FACILITIES

666 A Certification of Nonsegregated Facilities must be submitted prior to the award of a  
667 subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal  
668 Employment Opportunity clause. The certification may be submitted either for each  
669 subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or  
670 annually). Note: The penalty for making false statements in offers is prescribed in  
671 18 U.S.C. 1001.

672 CHANGES IN CONTRACTOR’S ORGANIZATION

673 25. While this Contract is in effect, no change may be made in the Contractor’s  
674 organization, which may affect the respective rights, obligations, privileges, and duties of either  
675 the United States or the Contractor under this Contract including, but not limited to, dissolution,  
676 consolidation, or merger, except upon the Contracting Officer’s written consent. For purposes of  
677 this Contract, the inclusion or exclusion of lands is not a change in the Contractor’s organization  
678 that is subject to this Article.

679 CONFIRMATION OF CONTRACT

680 26. Promptly after the execution of this Contract, the Contractor shall provide to the  
681 Contracting Officer a certified copy of a final decree of a court of competent jurisdiction in the  
682 State of California, confirming the proceedings on the part of the Contractor for the authorization  
683 of the execution of this Contract. This Contract shall not be binding on the United States until  
684 such final decree has been secured.

685 CONTRACT DRAFTING CONSIDERATIONS

686 27. This Contract has been negotiated and reviewed by the parties hereto, each of  
687 whom is sophisticated in the matters to which this Contract pertains. Articles 1 through 28 of  
688 this Contract have been drafted, negotiated and reviewed by the parties, and no one party shall be  
689 considered to have drafted the stated articles.

690

691

NOTICES

692 28. Any notice, demand, or request authorized or required by this Contract shall be  
693 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
694 delivered to the Area Manager, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom,  
695 California 95630-1799, and on behalf of the United States, when mailed, postage prepaid, or  
696 delivered to the Board of Directors, El Dorado Irrigation District, Attention: General Manager,  
697 2890 Mosquito Road, Placerville, California 95667. The designation of the addressee or the  
698 address may be changed by notice given in the same manner as provided in this Article for other  
699 notices.

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

702 THE UNITED STATES OF AMERICA

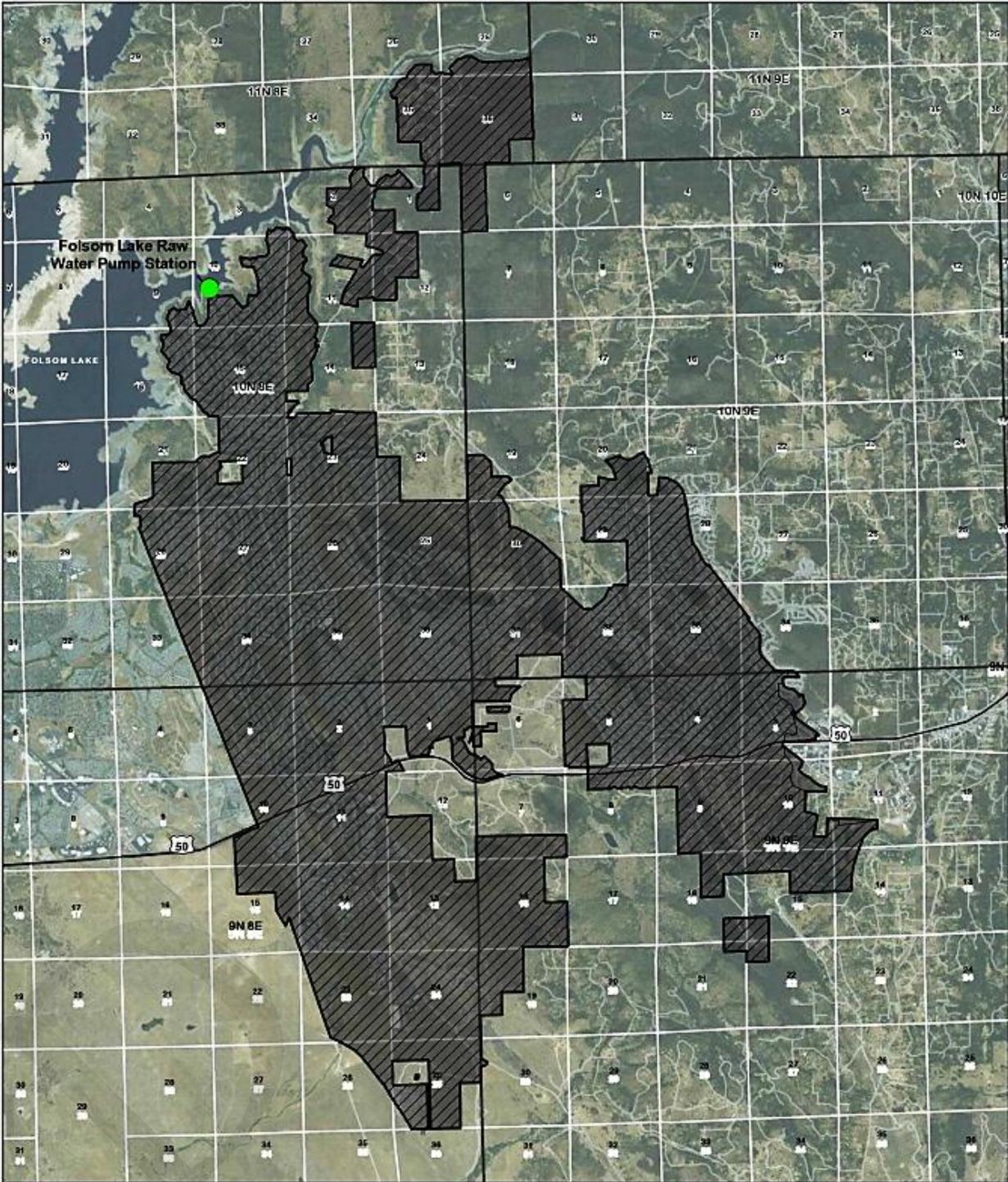
703 By: \_\_\_\_\_  
704 Regional Director, Mid-Pacific Region  
705 Bureau of Reclamation

706 (SEAL) EL DORADO IRRIGATION DISTRICT  
707

708 By: \_\_\_\_\_  
709 General Manager

710 Attest:

711 By: \_\_\_\_\_  
712 Clerk to the Board of Directors  
713 El Dorado Irrigation District



- Point of Diversion
- Contractor's Service Area
- District Boundary

**El Dorado Irrigation District**  
 Contract No. 06-WC-20-3317  
 Exhibit A

**RECLAMATION**  
*Managing Water in the West*



May 21 2018  
 File Name: P:\GIS\CONTRACTS\06-WC-20-3317\_06-000000\_06-WC2017.mxd

**Exhibit B**

2016 CONVEYANCE RATES

Central Valley Project Warren Act Contracts,  
Municipal and Industrial Water,  
Per Acre-Foot

**Table 1: El Dorado Irrigation District Warren Act Contract Rates Water Year 2016**

<b>Cost Component</b>	<b>M&amp;I Cost of Service <sup>1</sup></b>
Water Marketing	\$7.35
Conveyance O&M <sup>2</sup>	\$18.92
<b>Conveyance O&amp;M Sub-Total</b>	<b>\$26.27</b>
Other Cost	\$0.32
Conveyance Construction <sup>2</sup>	\$0.45
<b>Conveyance Construction Sub-Total</b>	<b>\$0.77</b>
<b>Total Water Marketing, and Conveyance:</b>	<b>\$27.04</b>
Storage O&M	\$0.00
Storage Construction	\$0.00
<b>Storage Sub-Total:</b>	<b>\$0.00</b>
<b>TOTAL Marketing, Conveyance &amp; Storage</b>	<b>\$27.04</b>

<sup>1</sup> The M&I Cost of Service Rate is applicable to Non-Project Water delivered for municipal and industrial purposes. See definition of "Municipal and Industrial Water" in subdivision (g) of Article 1 of this Contract.

<sup>2</sup> The Folsom Reservoir is used to convey water to the District; therefore, the storage rate is used for conveyance purposes.

Additional details of the rate components are available on the Internet at [CVP Mid-Pacific Region Water Rates](#)

## **Exhibit C**

### **Source(S) Of Contractor's Non-Project Water**

The sources of Non-Project Water shall be the Contractor's direct diversion rights for water of the South Fork American River at the Kyburz diversion dam, and rights for diversion for storage in Caples Lake in Alpine County, Silver Lake in Amador County and Lake Aloha in El Dorado County, granted in Permit 21112 by the California State Water Resources Control Board. The water rights covered in Permit 21112 are made available by the operation of existing facilities of the Federal Energy Regulatory Commission (FERC) "Project 184". The quantity of Non-Project Water available under the Contract, up to 17,000 acre-feet each year that will be conveyed to the Contractor will be the outflow of Non-Project Water from bypassed flows at the Kyburz diversion dam and releases from the El Dorado Powerhouse, minus 15% of this outflow for conveyance losses, and minus the diversions of such water at El Dorado Forebay and Hazel Creek Tunnel.

**Exhibit D**

**COOPERATIVE AGREEMENT No. R14AC00061**

7-2279 (01-2014)  
Bureau of Reclamation

**UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
ASSISTANCE AGREEMENT**

1A. AGREEMENT NUMBER R14AC00061		1B. MOD NUMBER		2. TYPE OF AGREEMENT <input type="checkbox"/> GRANT <input checked="" type="checkbox"/> COOPERATIVE AGREEMENT		3. CLASS OF RECIPIENT Special District Government	
4. ISSUING OFFICE U.S. Department of the Interior Bureau of Reclamation Mid-Pacific Region Office 2800 Cottage Way, Room E-1815 Sacramento, California 95825-1898 DUNS: 098865801/EIN: 84-1024566				5. RECIPIENT El Dorado Irrigation District 2890 Mosquito Road Placerville, California 95667			
				EIN #:	94-6036480	County:	Placer
				DUNS #:	048946420	Congress Dist:	04
6. GRANTS MANAGEMENT SPECIALIST Leanne Henderson Bureau of Reclamation Mid-Pacific Regional Office, MP-3829 2800 Cottage Way, Room E-1815 Sacramento, California 95825-1898 Phone: (916) 978-4372 Email: lhenderson@usbr.gov				7. RECIPIENT PROJECT MANAGER Brian Mueller, P.E. El Dorado Irrigation District 2890 Mosquito Road Placerville, California 95667 (530) 642-4029 (530) 642-4329 fax Email: bmueller@eid.org			
8. GRANTS OFFICER TECHNICAL REPRESENTATIVE Bonnie Van Pelt Bureau of Reclamation Central California Area Office Resource Management Division 7794 Folsom Dam Rd Folsom, California 95630 Phone: (916) 989-7127 Email: bvanpelt@usbr.gov				9A. INITIAL AGREEMENT EFFECTIVE DATE:  See Block 17a		9B. MODIFICATION EFFECTIVE DATE:	
				10. COMPLETION DATE  June 30, 2019			
11A. PROGRAM STATUTORY AUTHORITY Public Law 105-295, Section 1(b) and (c); Public Law 108-137, Section 219 (b); and Public Law 108-361, Section 203						11B. CFDA Number  15.512	
12. FUNDING INFORMATION		RECIPIENT/OTHER		RECLAMATION		13. REQUISITION NUMBER  20047668	
Total Estimated Amount of Agreement		\$17,470,345.00		\$3,030,320.00		14A. ACCOUNTING AND APPROPRIATION DATA  RR02430000 RN.03536200.0019300 00411C	
This Obligation		\$17,470,345.00		\$3,030,320.00			
Previous Obligation		\$0.00		\$0.00			
Total Obligation		\$17,470,345.00		\$3,030,320.00			
Cost-Share %		At Least 50%		No More Than 50%		14B. TREASURY ACCOUNT FUNDING SYMBOL  14XR0680A3	
15. PROJECT TITLE Temperature Control Device (TCD)							
16a. Acceptance of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the above-named Recipient  BY: <u>[Signature]</u> DATE: <u>9-18-14</u>				17a. Award of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the United States of America, Department of the Interior, Bureau of Reclamation  BY: <u>[Signature]</u> DATE: <u>9-19-14</u>			
16b. NAME, TITLE, AND TELEPHONE NUMBER OF SIGNER Jim Abercrombie General Manager 530-642-4041 <input type="checkbox"/> Additional signatures are attached				17b. NAME OF GRANTS OFFICER  Vivian Davis			

[Signature] 9/18/14  
EID Grants Office

**Figure 1: Signed Cooperative Agreement No. R14AC00061**

Agreement No. R14AC00061



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# Cooperative Agreement Between Bureau of Reclamation And El Dorado Irrigation District For Temperature Control Device (TCD)

## I. Overview and Schedule

### 1. Authority

This Cooperative Agreement (Agreement) is entered into between the United States of America, acting through the Department of the Interior, Bureau of Reclamation, hereinafter referred to as "Reclamation," and El Dorado Irrigation District, hereinafter referred to as the "Recipient" or "Grantee," pursuant to PL 105-295, Section 1 (b) and (c); PL 108-137, Section 219 (b); and PL 108-361, Section 203. The following section, provided in full text, authorizes Reclamation to award this financial assistance agreement:

PL 105-295, Sec 1 - AUTHORIZATION TO CONSTRUCT TEMPERATURE CONTROL DEVICES.

(b) DEVICE ON NON-CVP FACILITIES-The Secretary of the Interior is hereby authorized to construct or assist in the construction of one or more temperature control devices on existing non-Federal facilities delivering Central Valley Project water supplies from Folsom Reservoir and necessary associated temperature monitoring facilities. These costs of construction of temperature control device and associated temperature monitoring facilities shall be nonreimbursable and operated by the non-Federal facility owner at its expense, in coordination with the Central Valley Project for the benefit and propagation of Chinook salmon and steelhead trout in the American River, California.

(c) AUTHORIZATION.- There is hereby authorized to be appropriated for the construction of a temperature control device on Folsom Dam and necessary associated temperature monitoring facilities the sum of \$5,000,000 (adjusted for inflation based on October 1997 prices). There is also authorized to be appropriated for the construction of a temperature control device on existing non-Federal facilities and necessary associated temperature monitoring facilities the sum of \$1,000,000 (October 1997 prices). There is also authorized to be appropriated, in addition thereto, such amounts as are required for

operation, maintenance, and replacement of the temperature control devices on Folsom Dam and associated temperature monitoring facilities.

PL 108-137, Sec 219

(b) ADMINISTRATION

(a) Section 1 (b) of Public Law 105-295 (112 Stat. 2820) is amended by striking the second sentence and inserting the following: "The Federal share of the costs of constructing the temperature control device and associated temperature monitoring facilities shall be 50 percent and shall be nonreimbursable. The temperature control device and associated temperature monitoring facilities shall be operated by the non-Federal facility owner at its expense in coordination with the Central Valley Project for the benefit and propagation of Chinook salmon and steelhead trout in the American River, California."

(b) Section 1 (c) of Public Law 105-295 (112 Stat. 2820) is amended by striking "\$1,000,000" and inserting "\$3,500,000".

PL 108-361, SEC. 203. FOLSOM RESERVOIR TEMPERATURE CONTROL DEVICE AUTHORIZATION .

Section I (c) of Public Law 105-295 (112 Stat. 2820) (as amended by section 219(b) of Public Law 108-137 (117 Stat. 1853)) is amended in the second sentence by striking "\$3,500,000" and inserting "\$6,250,000' .

**2. Public Purpose of Support or Stimulation**

This project will assist the Recipient in accomplishing its public purpose by preserving the cold water habitat in Folsom Reservoir, and downstream in the Lower American River, in order to support critical life stage development of Environmental Species Act (ESA)-listed fish species, including Chinook Salmon.

**3. Background and Objectives**

All power plant outlets on Folsom Dam have a TCD to conserve cold water in the reservoir during the warmest months of the year. However, a jeopardy decision issued by the National Marine Fisheries in their Biological Opinion (June 4, 2009) indicated that more cold water is needed. The colder water is later released to cool the water temperature for species of listed anadromous cold water fish species (salmon and steelhead) downstream of the dam in the lower American River in accordance with Reasonable and Prudent Alternatives under the Biological Opinion for the Long-Term Coordinated Operations of the State Water Project and CVP. In summer, the lake stratifies with colder water at its lower elevations, and warmer water near its surface. Present operations of

the El Dorado Hills Pumping Plant (EDHPP), with its intakes located deep in the reservoir, reduces the volume of the cold water pool. The proposed Project would allow the Recipient to preserve more of the cold water pool at the lake bottom water into the water delivery system so that colder water can be used as needed to provide improved fish habitat and conditions in the lower American River below Folsom Dam.

Due to the limitations associated with the design of the existing the Recipient intake in Folsom Reservoir at times it diverts water from the reservoir's cold water pool. The completed TCD project will provide greater flexibility to meet temperature control objectives on the lower American River without interrupting the Recipient's water supply operations. The work under the current project continues coordination efforts between Reclamation and the Recipient on the potential design of a TCD to modify the Recipient's current water supply intake to the pumping plant.

The purpose of this agreement is for Reclamation to assist and provide guidance to the Recipient on the design and construction of a TCD on existing non-Federal facilities, EDHPP, delivering Central Valley Project (CVP) water supplies that would allow the Recipient to only withdraw warmer waters from different elevations at Folsom Lake, CA. The TCD is needed to preserve the cold water pool in Folsom Lake for the controlled releases from the dam for cold water anadromous fish species in the Lower American River.

#### **4. Period of Performance and Funds Availability**

This Agreement becomes effective on the date shown in Block 17a of Form 7-2279, United States of America, Department of the Interior, Bureau of Reclamation, Assistance Agreement. The Agreement shall remain in effect until the date shown in Block IO of Form 7-2279, United States of America, Department of the Interior, Bureau of Reclamation, Assistance Agreement. The period of performance for this Agreement may only be modified through written modification of the Agreement by a Reclamation Grants Officer (GO).

No legal liability on the part of the Government for any payment may arise until funds are made available, in writing, to the Recipient by the Grants Officer. The total estimated amount of federal funding for this agreement is \$3,030,320.00 of which the initial amount of federal funds available is limited to \$3,030,320.00 as indicated by "this obligation" within Block 12 of Form 7-2279, United States of America, Department of the Interior, Bureau of Reclamation, Assistance Agreement. Subject to the availability of Congressional appropriations, subsequent funds will be made available for payment through written modifications to this agreement by a Reclamation Grants Officer.

## 5. Scope of Work and Milestones

### Project Schedule:

Objective 1- Project Management and Administration	September 30, 2018
A - Value Planning Screening Evaluation	April 30, 2015
B - Update Construction Cost Estimate	September 30, 2015
Objective 2- Environmental Management and Requirements	September 30, 2016
A - Investigation and feasibility studies	September 30, 2015
Objective 3- Project Design and Development Plan	September 30, 2017
A - 30% design development	April 30, 2016
B - 60% design development	September 30, 2016
C - 90% design development	April 30, 2017
D - Final design development	September 30, 2017
Objective 4- Construction and Construction Site Environment	September 30, 2018
Objective 5- Post Project Observation and Functional Checkout	June 30, 2019

The project to be constructed enables the District to divert water from discrete elevations within Folsom Lake in El Dorado Hills, California to the El Dorado Hills Water Treatment Plant on a year round basis. At a minimum the District will always be permitted to divert water through the uppermost intake on the TCD that has minimum submergence for proper operation. The project includes the TCD and a pump station, both of which are required to deliver water from Folsom Lake. Only the TCD, and not the pump station, is included with this agreement. This Project will also provide the following benefits:

- The ability to take water at discrete elevations to preserve Folsom Reservoir's cold water pool.
- Enable the District to isolate one or two screened intakes (one in each intake) for the purpose of minimizing impacts to the cold water pool in Folsom Reservoir.
- Locally operated powered valve controllers for each valve.
- A monitoring Supervisory Control and Data Acquisition (SCADA) telemetry system to monitor water temperature and flow.

### Objective 1. Project Management and Administration

Establish and maintain accounts, books, and records pertaining to management, administration, coordination, labor, and financial transactions pertaining to this assistance agreement. The Recipient's role during the project management and administration phase for design and construction is as an expert witness to its contractor's quality of work and the final finished product. The Recipient will oversee and manage the design and construction of the TCD and provide a liaison and communication path for Reclamation. The liaison will provide project updates progress reports of the milestone in order for Reclamation to make periodic trips to review, inspect, and check the status of the project.

**A.** Provide the necessary preliminary investigation and feasibility studies associated with project management and administration for the design and construction concepts of a TCD. The preliminary investigation and feasibility study would include a technical evaluation of alternatives for temperature management (i.e., to look at alternate locations of a TCD along with other feasible alternatives in sequence with a TCD) in order to ascertain risks and to demonstrate that critical components are feasible. This preliminary investigation will proceed under a Value Planning (Screening Evaluation) Study with experts contributing to the outcomes based on historic and contemporary knowledge of the issues associated with temperature management at Folsom Dam and Reservoir. Once this initial phase is complete, the investigation and feasibility studies will include project management and administration specifics and determinations. The primary goals and contributions are risk and cost management. A full understanding of the administrative complexities associated with the TCD should be shown in order to provide sound project management. The results will demonstrate the project management and administrative feasibility including consideration of current aspects of TCD to provide a well-managed and administrative project. Screening studies are carried out to determine the overall management and administrative viability and economic attractiveness without pursuing the concepts in great detail.

**B.** Prepare an updated cost estimate for the construction of the TCD including; administration and legal, engineering, project inspection, construction capital, and construction contingency costs.

## **Objective 2. Environmental Management and Requirements**

Comply with all federal, state and local environmental requirements, laws, policies, regulations, assessments, and guidelines issued respectively relating to the TCD project and its construction. Implement all necessary environmental documentation which included the preparation, development, planning, certification, inspection, monitoring, entry, reports, permits, and information as well as other requirements specified by environmental law. Identify actual or potential environmentally significant impacts ensuring that the significant impacts are considered in project goals, objectives and targets. Ensure the goals, objectives, and targets are consistent with environmental documents. Provide notification for participation with federal, state, and local governments, groups, and private concerns in meetings, hearings, and other activities which affect the project keeping all stakeholders informed of activities. The results of all formal environmental materials, documentation, drawings and other information shall be documented in a design history file. This task will entail the listed subtasks as part of the project environmental management and requirements plan.

**A.** Provide preliminary environmental investigation and feasibility studies for the design and construction concepts for the TCD. The preliminary environmental investigation and feasibility studies include the current location at Folsom SRA and possible alternate locations with the elaboration of risks and a demonstration of critical environmental components as far as feasible. The investigation and feasibility studies include the current and alternate locations with the elaboration of risks and a demonstration of critical environmental components as far as feasible, as well as specifics and determinations of environmental requirements. The primary goals and contributions are risk and environmental management. A full understanding of the environmental complexities associated with the TCD should be shown in order to provide sound environmental management. The results will demonstrate the environmental feasibility including consideration of current aspects of TCD technologies and aesthetics to provide a well environmentally designed facility. Screening studies are carried out to determine the overall environmental viability and economic attractiveness without pursuing the concepts on great detail.

**Objective 3. Project Design and Development Plan**

Prepare, plan, and conduct project design reviews. Provide the results of the conceptual design, development scope, purpose, and general requirements including but not limited to plans, drawings, technical specifications, and contract requirements. Inform Reclamation of all formal investigative, preliminary, intermediate and final design reviews in order to participate and provide input. Consult with Reclamation outside design reviews on design controls and quality and reliability requirements in order to review and comment as a system of check and balances. Checks and balances may require a series of actions taken by the Recipient for further formulation, analysis, search, decision, specification, and provide to Reclamation. The results of all formal design review materials, documentation, drawings and other information will be documented in a design history file. This task will entail the listed subtasks as part of the project design development plan.

**A.** Present the 30% conceptual design development scope, purpose, and general requirements including but not limited to plans, drawings, details, technical specifications, planning activities and contract requirements. Provide all preliminary and conceptual design of the project. All drawings, specifications and associated design documentation will reflect the intent and rationale of the original design providing sufficient detail to describe the TCD and location of construction.

**B.** Present the 60% detailed design requirements including but not limited to plans, details, drawings, technical specifications, planning activities and contract requirements. Provide all preliminary associated documentation of the project. All drawings, specifications and associated

documentation will reflect the intent and rationale of the original design providing sufficient detail to describe the TCD and location of construction.

**C.** Present the 90% detailed design requirements including but not limited to plans, details, drawings, technical specifications, planning activities and contract requirements. Provide all preliminary and conceptual associated documentation of the project. All drawings, specifications and associated documentation will reflect the intent and rationale of the original design providing sufficient detail to describe the TCD and location of construction.

**D.** Present the final design requirements including but not limited to plans, details, drawings, technical specifications, planning activities and contract requirements. Provide all final design documentation for construction of the project. All drawings, specifications and associated documentation will reflect the final intent and rationale of the design providing all final detail to describe the TCD and location of construction. Their form and use will provide uniform procedures for consistent and efficient recording, indexing, maintenance, and referencing. All drawings, specifications and associated documentation will be prepared and reviewed professionally to assure their accuracy and the employment of sound engineering practices. The primary purpose of the contract drawings and specification package is to provide the necessary support for planning, procurement, fabrication, installation, construction, testing, and configuration and its systems, and to provide a vehicle for its review by stakeholders. Prior to the start of all construction Reclamation will review and concur with the specifications in the Final design.

#### **Objective 4. Construction and Construction Site Environment**

Establish and manage the construction and site environment for the TCD and associated Temperature Monitoring Facilities. This includes: construction project management, inspection, site security. Adhere to Federal, State and local laws that may have an impact to the TCD project. Ensure all interested parties and stakeholders visit the proposed site(s) so that each group will benefit by firsthand knowledge acquired from the field. Provide TCD and associated Temperature Monitoring Facilities layouts for maximum site use and space to include: access roads, staging, materials, personnel, temporary facilities, field offices, water, electrical, and other service utilities. Review all impacts to include: Flood zones, drainage, hazardous materials, excavation, demolition, grading, fill zones, special soil (foundation) conditions, geological hazard area, hazardous fire area, historic preservation, architectural review, noise ordinance (construction hours), environmental protection, and site preservation. Maintain and adhere to all building and construction codes and inspections

to include: codes established by law, the minimum acceptable standards for construction, electrical, plumbing and mechanical systems.

Maintain and adhere to all building and construction permits to include: new construction, demolition, remodeling, expansion, addition or repair to a structure.

**Objective 5. Post-Project Observation and Functional Checkout**

Develop and prepare Standing Operating Procedures (SOP) within one year of formal acceptance of the project. Verify and validate the correct operation of the TCD in conjunction with Reclamation and its facilities at Folsom Dam Reservoir for the safe and efficient operation to preserve the cold water pool in the lake and enhance downstream habitat for anadromous fish species.

**6. Responsibility of the Parties**

**6.1. Recipient Responsibilities**

6.1.1. The Recipient shall carry out the Scope of Work (SOW) in accordance with Section 5 of the Agreement and the terms and conditions stated herein. The Recipient shall adhere to Federal, state, and local laws, regulations, and codes, as applicable, and shall obtain all required approvals and permits. If the SOW contains construction activities, the Recipient is responsible for construction inspection, oversight, and acceptance. If applicable, the Recipient shall also coordinate and obtain approvals from site owners and operators.

**6.2. Reclamation Responsibilities**

6.2.1. Reclamation will monitor and provide Federal oversight of activities performed under this Agreement. Monitoring and oversight includes review and approval of financial status and performance reports, payment requests, and any other deliverables identified as part of the SOW. Additional monitoring activities may include site visits, conference calls, and other on-site and off-site monitoring activities. At the Recipient's request, Reclamation may also provide technical assistance to the Recipient in support of the SOW and objectives of this Agreement.

6.2.2. Substantial involvement by Reclamation is anticipated during the performance of activities funded under this

cooperative agreement. In support of this Agreement, Reclamation will be responsible for the following:

- Review overall project schedule and respective milestones and provide verification and validations, as necessary.
- Comment on the development of the TCD design and the collection of information to support the completion of deliverables above.
- Meet with the Recipient regularly to keep the momentum of this project going forward.
- Validate information as necessary to ensure the TCD design will improve operations within the project area (including appropriate checks and balances on design formulation, analysis, and specification).
- Verify and validate the correct operation of the TCD in conjunction with Reclamation's facilities at Folsom Dam Reservoir.

## **7. Budget**

### **7.1. Budget Estimate.**

The following is the estimated budget for this Agreement. As Federal financial assistance agreements are cost-reimbursable, the budget provided is for estimation purposes only. Final costs incurred under the budget categories listed may be either higher or lower than the estimated costs. All costs incurred by the Recipient under this agreement must be in accordance with any pre-award clarifications conducted between the Recipient and Reclamation, as well as with the terms and conditions of this agreement. Final determination of the allowability, allocability, or reasonableness of costs incurred under this agreement is the responsibility of the Grants Officer. Recipients are encouraged to direct any questions regarding allowability, allocability or reasonableness of costs to the Grants Officer for review prior to incurrence of the costs in question.

Budget Item Description	COMPUTATION		COST SHARE				Quantity Type (hours/days)	TOTAL COST
	\$/Unit	Total Qty	EID		Reclamation			
<b>Salaries And Wages</b>				Cost		Cost		
Engineering Division Manager	66	143		8,043		1,395	hrs	\$ 9,438
Senior Engineer	57	674		32,739		5,679	hrs	\$ 38,418
Environmental Division Manger	60	236		12,067		2,093	hrs	\$ 14,160
Environmental Review Analyst	47	678		27,156		4,710	hrs	\$ 31,866
<b>Fringe Benefits - 57%</b>								
Engineering Division Manager	38	143		4,584		795	hrs	\$ 5,380
Senior Engineer	32	674		18,661		3,237	hrs	\$21,898
Environmental Division Manger	34	236		6,878		1,193	hrs	\$ 8,071
Environmental Review Analyst	27	678		15,479		2,685	hrs	\$18,164
<b>Travel</b>								\$0
<b>Equipment</b>								\$0
<b>Supplies/Materials</b>								\$0
<b>Contractual/ Construction</b>								
Engineering Fees	900,000	1		766,966		133,034	each	\$900,000
Inspection Fees	1,350,000	1		1,150,449		199,551	each	\$1,350,000
Construction	18,000,000	1		15,339,317		2,660,683	each	\$18,000,000
<b>Other</b>								\$0
<b>Total Direct Costs</b>				17,382,340		3,015,055		\$20,397,395
<b>Indirect Costs - 110% of Salaries and Wages</b>	93,882	1.1	80,004	88,005	13,878	15,265	each	\$103,270
<b>Total Project Costs</b>								\$20,500,665

Figure 2: Estimated Budget for this Agreement

FUNDING SOURCES	% TOTAL PROJECT COST	TOTAL COST BY SOURCE
RECIPIENT FUNDING	85%	\$17,470,345
OTHER NON-FEDERAL FUNDING		
RECLAMATION FUNDING	15%	\$3,030,320
OTHER FEDERAL FUNDING		
<b>TOTALS</b>	100%	\$20,500,665

Figure 3: Estimated Percentage of Total Project Cost and Total Cost by Source

## **7.2. Cost Sharing Requirement**

At least 50% non-Federal cost-share is required for costs incurred under this Agreement. If pre-award costs are authorized, reimbursement of these costs is limited to federal cost share percentage identified in this agreement.

## **7.3. Pre-Award Incurrence of Costs**

The Recipient is not authorized to incur costs prior to the award of this Agreement. Costs incurred prior to the award of this agreement are not allowable.

## **7.4. Allowable Costs (2 CFR Part §225)**

Costs incurred for the performance of this Agreement must be allowable, allocable to the project, and reasonable. The following Office of Management and Budget (OMB) Circular, codified within the Code of Federal Regulations (CFR), governs the allowability of costs for Federal financial assistance:

2 CFR Part 225 (OMB Circular A-87), "Cost Principles for State, Local, and Indian Tribal Governments"

Expenditures for the performance of this Agreement must conform to the requirements within this Circular. The Recipient must maintain sufficient documentation to support these expenditures. Questions on the allowability of costs should be directed to the GO responsible for this Agreement.

The Recipient shall not incur costs or obligate funds for any purpose pertaining to operation of the program or activities beyond the expiration date stated in the Agreement. The only costs which are authorized for a period of up to 90 days following the project performance period are those strictly associated with closeout activities for preparation of the final report.

## **7.5. Changes (43 CFR §12.70)**

- (a) General. Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) Relation to cost principles. The applicable cost principles (see 43 §12.62) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) Budget changes.

(1) Nonconstruction projects. Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds \$100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) Construction projects. Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) Combined construction and nonconstruction projects. When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) Programmatic changes. Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

- (1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).
  - (2) Need to extend the period of availability of funds.
  - (3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.
  - (4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award, unless included in the initialfunding proposal. This approval requirement is in addition to the approval requirements of 43 §12.76 but does not apply to the procurement of equipment, supplies, and general support services.
- (e) Additional prior approval requirements. The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.
- (f) Requesting prior approval.
- (1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.
  - (2) A request for a prior approval under the applicable Federal cost principles (see §12.62) may be made by letter.
  - (3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision , requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

## **7.6. Modifications**

Any changes to this Agreement shall be made by means of a written modification. Reclamation may make changes to the Agreement by means of a unilateral modification to address administrative matters, such as changes in address, no-cost time extensions, or the addition of previously agreed upon funding. Additionally, a unilateral modification may be utilized by Reclamation if it should become necessary to suspend or terminate the Agreement in accordance with 43 CFR 12.83.

All other changes shall be made by means of a bilateral modification to the Agreement. No oral statement made by any person, or written statement by any person other than the GO, shall be allowed in any manner or degree to modify or otherwise effect the terms of the Agreement.

All requests for modification of the Agreement shall be made in writing, provide a full description of the reason for the request, and be sent to the attention of the GO. Any request for project extension shall be made at least 45 days prior to the expiration date of the Agreement or the expiration date of any extension period that may have been previously granted. Any determination to extend the period of performance or to provide follow-on funding for continuation of a project is solely at the discretion of Reclamation.

## **8. Key Personnel**

### **8.1. Recipient' s Key Personnel**

The Recipient's Project Manager for this Agreement shall be:

Brian Mueller, P.E.  
El Dorado Irrigation District  
2890 Mosquito Road  
Placerville, California 95667  
(530) 642-4029  
(530) 642-4329 fax  
Email: [bmueller@eid.org](mailto:bmueller@eid.org)

Changes to Key Personnel require compliance with 43 CFR 12.70(d)(3).

## 8.2. Reclamation' s Key Personnel

### 8.2.1. Grants Officer (GO):

Vivian Davis  
Bureau of Reclamation  
Mid-Pacific Regional Office  
2800 Cottage Way,  
Room E-1815 Sacramento,  
California 95825-1898  
Email: [vdavis@usbr.gov](mailto:vdavis@usbr.gov)

- (a) The GO is the only official with legal delegated authority to represent Reclamation. The GO's responsibilities include, but are not limited to the following:
- (1) Formally obligate Reclamation to expend funds or change the funding level of the Agreement;
  - (1) Approve through formal modification changes in the scope of work and/or budget;
  - (2) Approve through formal modification any increase or decrease in the period of performance of the Agreement;
  - (3) Approve through formal modification changes in any of the expressed terms, conditions, or specifications of the Agreement;
  - (4) Be responsible for the overall administration, management, and other non-programmatic aspects of the Agreement including, but not limited to, interpretation of financial assistance statutes, regulations, circulars, policies, and terms of the Agreement;
  - (5) Where applicable, ensures that Reclamation complies with the administrative requirements required by statutes, regulations, circulars, policies, and terms of the Agreement.

8.2.2. Grants Officer Technical Representative (GOTR):

Bonnie Van Pelt  
Bureau of Reclamation  
Central California Area Office (CCAO)  
Resource Management Division  
7794 Folsom Dam Rd Folsom,  
California 95630  
Email: [bvanpelt@usbr.gov](mailto:bvanpelt@usbr.gov)

- (a) The GOTR's authority is limited to technical and programmatic aspects of the Agreement. The GOTR's responsibilities include, but are not limited to, the following:
- (1) Assist the Recipient, as necessary, in interpreting and carrying out the scope of work in the Agreement;
  - (2) Review, and where required, approve Recipient reports and submittals as required by the Agreement;
  - (3) Where applicable, monitor the Recipient to ensure compliance with the technical requirements of the Agreement;
  - (4) Where applicable, ensure that Reclamation complies with the technical requirements of the Agreement;
- (b) The GOTR does not have the authority to and may not issue any technical assistance which
- (1) Constitutes an assignment of additional work outside the scope of work of the Agreement;
  - (2) In any manner causes an increase or decrease in the total estimated cost or the time required for performance; or
  - (3) Changes any of the expressed terms, conditions, or specifications of the Agreement.

8.2.3. Grants Management Specialist. The Grants Management Specialist is the primary administrative point of contact for this agreement and should be contacted regarding issues related to the day-to-day management of the agreement. Requests for approval regarding the terms and conditions of the agreement, including but not limited to modifications

and prior approval, may only be granted, in writing, by a Reclamation Grants Officer. Please note that for some agreements, the Grants Officer and the Grants Management Specialist may be the same individual.

Leanne Henderson  
Bureau of Reclamation  
Mid-Pacific Regional Office  
2800 Cottage Way,  
Room E-1815 Sacramento,  
California 95825-1898  
Email: [lhenderson@usbr.gov](mailto:lhenderson@usbr.gov)

## **9. Reporting Requirements and Distribution**

### **9.1. Noncompliance.**

Failure to comply with the reporting requirements contained in this Agreement may be considered a material non-compliance with the terms and conditions of the award. Noncompliance may result in withholding of payments pending receipt of required reports, denying both the use of funds and matching credit for all or part of the cost of the activity or action not in compliance, whole or partial suspension or termination of the Agreement, recovery of funds paid under the Agreement, withholding of future awards, or other legal remedies in accordance with 43 CFR §12.83.

### **9.2. Financial Reports.**

Financial Status Reports shall be submitted by means of the SF-425 and shall be submitted according to the Report Frequency and Distribution schedule below. All financial reports shall be signed by an Authorized Certifying Official for the Recipient's organization.

### **9.3. Monitoring and reporting program performance (43 CFR §12.80)**

- (a) Monitoring by grantees. Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.
- (b) Nonconstruction performance reports. The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet

its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

- (1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.
  - (2) Performance reports will contain, for each grant, brief information on the following:
    - (i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.
    - (ii) The reasons for slippage if established objectives were not met.
    - (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
  - (3) Grantees will not be required to submit more than the original and two copies of performance reports.
  - (4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.
- (c) Construction performance reports. For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal

agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

- (d) Significant developments. Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:
  - (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
  - (2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.
- (e) Federal agencies may make site visits as warranted by program needs.
- (f) Waivers, extensions.
  - (1) Federal agencies may waive any performance report required by this part if not needed.
  - (2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

#### **9.4. Report Frequency and Distribution.**

The following table sets forth the reporting requirements for this Agreement. Please note the first report due date listed for each type of report.

Required Reports	Interim Reports	Final Report
<b>Performance Report</b>		
Format	No specific format required. See content requirements within Section 9.3 (43 CFR 12.80) above.	Summary of activities completed during the entire period of performance is required. See content requirements within Section 9.3 (43 CFR 12.80) above.
Reporting Frequency	Semi-Annual	Final Report due upon completion of Agreement's period of performance
Reporting Period	October 1 through March 31 and April 1 through September 30.	Entire period of performance
Due Date*	Within 30 days after the end of the Reporting Period.	Within 90 days after the completion date of the Agreement
First Report Due Date	The first performance report is due for reporting period ending March 31, 2015	N/A
Submit to:	Grants Management Specialist	Grants Management Specialist
<b>Federal Financial Report</b>		
Format	SF-425 (all sections must be completed)	SF-425(all sections must be completed)
Reporting Frequency	Semi-Annual	Final Report due upon completion of Agreement's period of performance
Reporting Period	October 1 through March 31 and April 1 through September 30.	Entire period of performance
Due Date*	Within 30 days after the end of the Reporting Period.	Within 90 days after the completion date of the Agreement
First Report Due Date	The first performance report is due for reporting period ending March 31, 2015	N/A
Submit to:	Grants Management Specialist	Grants Management Specialist

Figure 4: Report Frequency and Distribution.

\* If the completion date is prior to the end of the next reporting period, then no interim report is due for that period. Instead, the Recipient is required only to submit the final financial and performance reports, which will cover the entire period of performance including the last abbreviated reporting period.

## 10. Regulatory Compliance

The Recipient agrees to comply or assist Reclamation with all regulatory compliance requirements and all applicable state, Federal, and local environmental and cultural and paleontological resource protection laws and regulations as applicable to this project. These may include, but are not limited to, the National Environmental Policy Act (NEPA), including the Council on Environmental Quality and Department of the Interior regulations implementing NEPA, the Clean Water Act, the Endangered Species Act, consultation with potentially affected Tribes, and consultation with the State Historic Preservation Office.

Certain environmental and other associated compliance are Federal responsibilities, and will occur as appropriate. Reclamation will identify the need for and will complete any appropriate environmental compliance requirements, as identified above, pertinent to Reclamation pursuant to activities specific to this assisted activity. ***Environmental and other associated compliance shall be completed prior to the start of this project. As such, notwithstanding any other provision of this Agreement. Reclamation shall not provide any funds to the Recipient for Agreement purposes, and the Recipient shall not begin implementation of the assisted activity described in this Agreement, until Reclamation provides written notice to the Recipient that all applicable environmental and regulatory compliance analyses and clearances have been completed and that the Recipient may begin implementation of the assisted activity. If the Recipient begins project activities that require environmental and other regulatory compliance approval, such as construction activities, prior to receipt of written notice from Reclamation that all such clearances have been obtained, then Reclamation reserves the right to unilaterally terminate this agreement for cause.***

#### **11. Provisional Indirect Cost Rate Term**

**NOTE :** The 110% indirect cost rate which is applied against the following direct cost base of \$103,270, is a provisional agreement between Reclamation and the Recipient and is subject to change. The Recipient must coordinate review and approval of their indirect cost rate with the Acquisition Services Directorate, Interior Business Center (ASD/IBC), Department of the Interior within 9 months of award in accordance with the applicable OMB Cost Principles.

## **II. Reclamation Standard Terms and Conditions - States, Local Governments, and Federally Recognized Indian Tribal Governments**

### **1. Regulations**

The regulations at 43 CFR, Part 12, Subparts A, C, E, and F, are hereby incorporated by reference as though set forth in full text. The following Office of Management and Budget (OMB) Circulars, as applicable, and as implemented by 43 CFR Part 12, are also incorporated by reference and made a part of this Agreement. Failure of a Recipient to comply with any applicable regulation or circular may be the basis for withholding payments for proper charges made by the Recipient and/or for termination of support.

- 1.1.** Colleges and Universities that are Recipients or sub-Recipients shall use the following: 2 CFR Parts 215 and 220 (Circular A 21), "Cost Principles for Educational Institutions" Circular A 110, as amended September 30, 1999, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations" (Codification by Department of Interior, 43 CFR 12, Subpart F)

Circular A-133, revised June 27, 2003, "Audits of States, Local Governments, and Non-Profit Organizations"

- 1.2.** State, Local and Tribal Governments that are Recipients or sub-Recipients shall use the following:

2 CFR Part 225 (Circular A 87), "Cost Principles for State, Local, and Indian Tribal Governments"

Circular A 102, as amended August 29, 1997, "Grants and Cooperative Agreements with State and Local Governments" (Grants Management Common Rule, Codification by Department of Interior, 43 CFR 12, Subpart C)

Circular A-133, revised June 27, 2003, Audits of States, Local Governments, and Non-Profit Organizations"

- 1.3.** Nonprofit Organizations that are Recipients or sub-Recipients shall use the following:

2 CFR Part 230 (Circular A 122), "Cost Principles for Non-Profit Organizations" Circular A 110, as amended September 30, 1999, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations" (Codification by Department of Interior, 43 CFR 12, Subpart F)

Circular A-133, revised June 27, 2003, "Audits of States, Local Governments, and Non-Profit Organizations"

- 1.4.** Organizations other than those indicated above that are Recipients or sub-Recipients shall use the basic principles of OMB Circular A-110 (Codification by Department of Interior, 43 CFR 12, Subpart F), and cost principles shall be in accordance with 48 CFR Subpart 31.2.

- 1.5.** 43 CFR 12.77 sets forth further regulations that govern the award and administration of subawards by State governments.

## 2. Payment

### 2.1. Payment Standards. (43 CFR §12.61)

- (a) Scope. This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.
- (b) Basic standard. Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.
- (c) Advances. Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.
- (d) Reimbursement. Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.
- (e) Working capital advances. If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) Effect of program income, refunds, and audit recoveries on payment.

- (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.
- (2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) Withholding payments.

- (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless-
  - (i) The grantee or subgrantee has failed to comply with grant award conditions, or
  - (ii) The grantee or subgrantee is indebted to the United States.
- (2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with §12.83(c).
- (3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) Cash depositories.

- (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained

from the Minority Business Development Agency,  
Department of Commerce, Washington, DC 20230.

- (2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State Agreement.
  - (i) Interest earned on advances. Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative expenses.

## 2.2. Payment Method

Recipients must utilize the Department of Treasury Automated Standard Application for Payments (ASAP) payment system to request advance or reimbursement payments. ASAP is a Recipient-initiated payment and information system designed to provide a single point of contact for the request and delivery of Federal funds. ASAP is the only allowable method for request and receipt of payment. Recipient procedures must minimize the time elapsing between the drawdown of Federal funds and the disbursement for agreement purposes.

Recipients must complete enrollment in ASAP for all active financial assistance agreements with Reclamation. ASAP enrollment is specific to each Agency and Bureau; meaning, if a Recipient organization has an existing ASAP account with another Federal agency or Department of the Interior bureau, but not with Reclamation, then the Recipient must initiate and complete enrollment in ASAP under Reclamation's Agency Location Code (1425) through submission of an enrollment form found at [www.usbr.gov/mso/aamd/asap.html](http://www.usbr.gov/mso/aamd/asap.html). For information regarding ASAP enrollment, please visit [Bureau of Reclamation's ASAP Enrollment](#), or contact the Reclamation ASAP Help Desk BOR\_ASAP [Reclamation's ASAP Help Desk](#). Further information regarding ASAP may be obtained from the ASAP website at [United States Department of Treasury Automated Standard Application for Payment](#).

## 3. Procurement Standards (43 Cfr §12.76)

- (a) States. When procuring property and services under a grant, a state will follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will ensure

required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards.

- (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.
- (2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
  - (i) The employee, officer or agent,
  - (ii) Any member of his immediate family,
  - (iii) His or her partner, or
  - (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and

subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

- (4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.
- (6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- (8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- (9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only-

- (i) After a determination that no other contract is suitable, and
- (ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

- (i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and
- (ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition.

(1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the

standards of §12.76. Some of the situations considered to be restrictive of competition include but are not limited to:

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
  - (ii) Requiring unnecessary experience and excessive bonding,
  - (iii) Noncompetitive pricing practices between firms or between affiliated companies,
  - (iv) Noncompetitive awards to consultants that are on retainer contracts,
  - (v) Organizational conflicts of interest,
  - (vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and
  - (vii) Any arbitrary action in the procurement process.
- (2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (NE) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- (3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:
- (i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may

include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

- (ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed

(1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$150,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in §12.76(d)(2)(i) apply.

- (i) In order for sealed bidding to be feasible, the following conditions should be present:
  - (A) complete, adequate, and realistic specification or purchase description is available;
  - (B) Two or more responsible bidders are willing and able to compete effectively and for the business; and
  - (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- (ii) If sealed bids are used, the following requirements apply:
  - (A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
  - (B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
  - (C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
  - (D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
  - (E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- (ii) Proposals will be solicited from an adequate number of qualified sources;
- (iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
- (iv)
- (v) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (vi) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

- (i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible

under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

- (A) The item is available only from a single source;
  - (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - (C) The awarding agency authorizes noncompetitive proposals; or
  - (D) After solicitation of a number of sources, competition is determined inadequate.
- (ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.
  - (iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.
- (e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.
- (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
  - (2) Affirmative steps shall include:
    - (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
    - (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
    - (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
  - (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
  - (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.
- (f) Contract cost and price.
- (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.
  - (2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry

profit rates in the surrounding geographical area for similar work.

- (3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see §12.62). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.
- (4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review.

- (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- (2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:
  - (i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or
  - (ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or
  - (iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

- (iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
  - (v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.
- (3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.
- (i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.
  - (ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.
- (h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:
- (1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other

negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

- (2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  - (3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
- (i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.
- (1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold.)
  - (2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)
  - (3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees.)
  - (4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair.)

- (5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation.)
- (6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)
- (7) Notice of awarding agency requirements and regulations pertaining to reporting.
- (8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- (9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.
- (10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
- (12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000.)

- (13) Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

#### **4. Equipment (43 Cfr §12.72)**

- (a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.
- (b) States. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.
- (c) Use.
- (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.
  - (2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.
  - (3) Notwithstanding the encouragement in §12.65(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.
  - (4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of

the replacement property, subject to the approval of the awarding agency.

- (d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:
- (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
  - (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
  - (3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.
  - (4) Adequate maintenance procedures must be developed to keep the property in good condition.
  - (5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- (e) Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:
- (1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.
  - (2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

- (3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.
- (f) Federal equipment. In the event a grantee or subgrantee is provided Federally-owned equipment:
  - (1) Title will remain vested in the Federal Government.
  - (2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.
  - (3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.
- (g) Right to transfer title. The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:
  - (1) The property shall be identified in the grant or otherwise made known to the grantee in writing.
  - (2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow 12.72(e)
  - (3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

## **5. Supplies (43 Cfr §12.73)**

- (a) Title. Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.
- (b) Disposition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not

needed for any other Federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

## **6. Inspection**

Reclamation has the right to inspect and evaluate the work performed or being performed under this Agreement, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If Reclamation performs inspection or evaluation on the premises of the Recipient or a sub-Recipient, the Recipient shall furnish and shall require sub-Recipients to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

## **7. Audit (31 U.S.C. 7501-7507)**

Non-Federal entities that expend \$500,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133. Federal awards are defined as Federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities. They do not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Non-Federal entities that expend less than \$500,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in A-133, § 215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

## **8. Enforcement (43 Cfr §12.83)**

- (a) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances
  - (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

- (2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,
  - (3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
  - (4) Withhold further awards for the program, or
  - (5) Take other remedies that may be legally available.
- (b) Hearings, appeals. In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.
- (c) Effects of suspension and termination. Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:
- (1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,
  - (2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.
- (d) Relationship to Debarment and Suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (2 CFR 29.5.12 and 2 CFR 1400, Subpart C).

## **9. Termination For Convenience (43 Cfr §12.84)**

Except as provided in 43 CFR §12.83 awards may be terminated in whole or in part only as follows:

- (a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or
- (b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §12.83 or paragraph (a) of this section.

### **10. Debarment and Suspension (2 Cfr §1400)**

The Department of the Interior regulations at 2 CFR 1400-- Governmentwide Debarment and Suspension (Nonprocurement), which adopt the common rule for the governmentwide system of debarment and suspension for nonprocurement activities, are hereby incorporated by reference and made a part of this Agreement. By entering into this grant or cooperative Agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 1400, Subpart C, and agrees to include a similar term or condition in all lower-tier covered transactions. These regulations are available at [DOI Nonprocurement Regulations](#).

### **11. Drug-Free Workplace (2 Cfr §182 And §1401)**

The Department of the Interior regulations at 2 CFR 1401- Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), which adopt the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq, as amended) applicable to grants and cooperative agreements, are hereby incorporated by reference and made a part of this agreement. By entering into this grant or cooperative agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 182.

### **12. Assurances and Certifications Incorporated By Reference**

The provisions of the Assurances, SF 4248 or SF 424D as applicable, executed by the Recipient in connection with this Agreement shall apply with full force and effect to this Agreement. All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, and cooperative

Agreements, loans, and other forms of Federal assistance. The Recipient shall comply with Title VI or the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and any program-specific statutes with anti-discrimination requirements. The Recipient shall comply with civil rights laws including, but not limited to, the Fair Housing Act, the Fair Credit Reporting Act, the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act.

Such Assurances also include, but are not limited to, the promise to comply with all applicable Federal statutes and orders relating to nondiscrimination in employment assistance, and housing; the Hatch Act; Federal wage and hour laws and regulations and work place safety standards.

Federal environmental laws and regulations and the Endangered Species Act; and Federal protection of rivers and waterways and historic and archeological preservation.

### **13. Covenant against Contingent Fees**

The Recipient warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide offices established and maintained by the Recipient for the purpose of securing Agreements or business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

### **14. Trafficking Victims Protection Act Of 2000 (2 Cfr §175.15)**

Trafficking in persons.

- (a) Provisions applicable to a Recipient that is a private entity.
  - (1) You as the Recipient, your employees, subRecipients under this award, and subRecipients' employees may not
    - (i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

- (ii) Procure a commercial sex act during the period of time that the award is in effect; or
  - (iii) Use forced labor in the performance of the award or subawards under the award.
- (2) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subRecipient that is a private entity -
- (i) Is determined to have violated a prohibition in paragraph a. 1 of this award term; or
  - (ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either:
    - (A) Associated with performance under this award; or
    - (B) Imputed to you or the subRecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFRpart I 400.
- (b) Provision applicable to a Recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subRecipient that is a private entity-
- (1) Is detennined to have violated an applicable prohibition in paragraph a.1 of this award term; or
  - (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:
    - (i) Associated with performance under this award; or
    - (ii) Imputed to the subRecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide

Debarment and Suspension (Nonprocurement), " as implemented by our agency at 2 CFR part 1400.

(c) Provisions applicable to any Recipient.

- (1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
- (2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
  - (i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
  - (ii) Is in addition to all other remedies for noncompliance that are available to us under this award.
- (3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

(d) Definitions. For purposes of this award term:

- (1) "Employee" means either:
  - (i) An individual employed by you or a subRecipient who is engaged in the performance of the project or program under this award; or
  - (ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- (2) "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- (3) "Private entity":

- (i) Means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
- (ii) Includes:
  - (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
  - (B) A for-profit organization.
- (4) Severe forms of trafficking in persons, "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

#### **15. New Restrictions on Lobbying (43 Cfr §18)**

The Recipient agrees to comply with 43 CFR 18, New Restrictions on Lobbying, including the following certification:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- (c) The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants,

loans, and cooperative agreements) and that all subRecipients shall certify accordingly

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**16. Uniform Relocation Assistance And Real Property Acquisition Policies Act Of 1970 (Ura) (42 Usc § 4601 Et Seq.)**

- (a) The Uniform Relocation Assistance Act (URA), 42 U.S.C. § 4601 et seq., as amended, requires certain assurances for Reclamation funded land acquisition projects conducted by a Recipient that cause the displacement of persons, businesses, or farm operations. Because Reclamation funds only support acquisition of property or interests in property from willing sellers, it is not anticipated that Reclamation funds will result in any "displaced persons," as defined under the URA.
- (b) However, if Reclamation funds are used for the acquisition of real property that results in displacement, the URA requires Recipients to ensure that reasonable relocation payments and other remedies will be provided to any displaced person. Further, when acquiring real property, Recipients must be guided, to the greatest extent practicable, by the land acquisition policies in 42 U.S.C. § 4651 .
- (c) Exemptions to the URA and 49 CFR Part 24
  - (1) The URA provides for an exemption to the appraisal, review and certification rules for those land acquisitions classified as "voluntary transactions." Such "voluntary transactions" are classified as those that do not involve an exercise of eminent domain authority on behalf of a Recipient, and must meet the conditions specified at 49 CFR § 24.101(b)(1)(i)-(iv).
  - (2) For any land acquisition undertaken by a Recipient that receives Reclamation funds, but does not have authority to acquire the real property by eminent domain, to be exempt from the requirements of 49 CFR Part 24 the Recipient must:

- (i) provide written notification to the owner that it will not acquire the property in the event negotiations fail to result in an amicable agreement, and;
  - (ii) inform the owner in writing of what it believes to be the market value of the property
- (d) Review of Land Acquisition Appraisals. Reclamation reserves the right to review any land appraisal whether or not such review is required under the URA or 49 CFR § 24.104. Such reviews may be conducted by the Department of the Interior's Appraisal Services Directorate or a Reclamation authorized designee. When Reclamation determines that a review of the original appraisal is necessary, Reclamation will notify the Recipient and provide an estimated completion date of the initial appraisal review.

### **17. Central Contractor Registration And Universal Identifier Requirements (2 Cfr 25, Appendix A)**

The Central Contractor Registration (CCR) has been migrated to the System for Award Management (SAM). Recipients must continue to comply with the CCR requirements below by maintaining current registration within [www.SAM.gov](http://www.SAM.gov).

#### **A. Requirement/or Central Contractor Registration (CCR)**

Unless you are exempted from this requirement under 2 CFR 25.110, you as the Recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

#### **B. Requirement for Data Universal Numbering System (DUNS) Numbers. If you are authorized to make subawards under this award, you:**

- (1) Must notify potential subRecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
- (2) May not make a subaward to an entity unless the entity has provided its DUNS number to you.

#### **C. Definitions**

For purposes of this award term:

- (1) Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a Recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).
- (2) Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705- 5711) or the Internet (currently at <http://fedgov.dnb.com/webform> ).
- (3) Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
  - (a) A Governmental organization , which is a state, local government, or Indian Tribe;
  - (b) A foreign public entity
  - (c) A domestic or foreign nonprofit organization;
  - (d) A domestic or foreign for-profit organization; and
  - (e) A Federal agency, but only as a subRecipient under an award or subaward to a non- Federal entity.
- (4) Subaward :
  - (a) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the Recipient award to an eligible subRecipient.
  - (b) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. 11.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations' ").
  - (c) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
- (5) SubRecipient means an entity that:
  - (a) Receives a subaward from you under this award; and
  - (b) Is accountable to you for the use of the Federal funds provided by the subaward .

## **18. Prohibition on Text Messaging and Using Electronic Equipment Supplied by the Government While Driving**

Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, was signed by President Barack Obama on October 1, 2009 (ref: [October 1, 2009 Executive Order 13513](#)). This Executive Order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date. In the meantime, please adopt and enforce policies that immediately ban text messaging while driving company-owned or rented vehicles, government - owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.

## **19. Reporting Subawards and Executive Compensation (2 Cfr 170 Appendix A)**

Reporting Subawards and Executive Compensation.

### (a) Reporting of first-tier subawards

(1) **Applicability.** Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

### (2) Where and when to report.

- (i) You must report each obligating action described in paragraph a. l. of this award term to <http://www.fsrs.gov>.
- (ii) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

- (3) 3. What to report. You must report the information about each obligating action that the submission instructions posted at [http://www. f 'lrs.gov](http://www.f 'lrs.gov) specify.

(b) Reporting Total Compensation of Recipient Executives.

- (1) Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if-

- (i) the total Federal funding authorized to date under this award is \$25,000 or more;
- (ii) in the preceding fiscal year, you received-

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CPR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CPR 170.320 (and subawards); and

- (iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at [U.S. Security & Exchange Commission](http://www.sec.gov) .)

- (2) Where and when to report. You must report executive total compensation described in paragraph b. 1. of this award term:

- (i) As part of your registration profile at <http://www.ccr.gov>.
- (ii) By the end of the month following the month in which this award is made, and annually thereafter.

(c) Reporting of Total Compensation of SubRecipient Executives.

(1) Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subRecipient under this award, you shall report the names and total compensation of each of the subRecipient's five most highly compensated executives for the subRecipient's preceding completed fiscal year, if-

(i) in the subRecipient's preceding fiscal year, the subRecipient received

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/lanswers/execomp.htm>.)

(2) Where and when to report. You must report subRecipient executive total compensation described in paragraph c. 1. of this award term:

(i) To the Recipient.

(ii) By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subRecipient by November 30 of that year.

(d) Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- (i) Subawards, and
- (ii) The total compensation of the five most highly compensated executive of any subRecipient.

(e) Definitions. For purposes of this award term:

(1) Entity means all of the following, as defined in 2 CFR part 25:

- (i) A Governmental organization, which is a State, local government, or Indian tribe;
- (ii) A foreign public entity;
- (iii) A domestic or foreign nonprofit organization;
- (iv) A domestic or foreign for-profit organization;
- (v) A Federal agency, but only as a subRecipient under an award or subaward to a non-Federal entity.

(2) Executive means officers, managing partners, or any other employees in management positions.

(3) Subaward:

- (i) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the Recipient award to an eligible subRecipient.
- (ii) ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. \_ .210 of the attachment to OMB Circular A- 133, "Audit-; of States, Local Governments, and Non-Profit Organizations ").

- (iii) A subaward may be provided through any legal agreement, including an agreement that you or a subRecipient considers a contract.

(4) SubRecipient means an entity that:

- (i) Receives a subaward from you (the Recipient) under this award ; and
- (ii) Is accountable to you for the use of the Federal funds provided by the subaward.

(5) Total compensation means the cash and noncash dollar value earned by the executive during the Recipient's or subRecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- (i) Salary and bonus
- (ii) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- (iii) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (iv) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (v) Above-market earnings on deferred compensation which is not tax- qualified.
- (vi) Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

**20. Recipient Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Sep 2013)**

- (a) This award and employees working on this financial assistance agreement will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub.L. 112-239).
- (b) The Award Recipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C 4712.
- (c) The Award Recipient shall insert the substance of this clause, including this paragraph (c), in all subawards or subcontracts over the simplified acquisition threshold. 48 CFR § 52.203-17 (as referenced in 48 CFR § 3.908-9).



## **Exhibit E**

### **GAGING PLAN**

#### **Water Measurement**

The Contractor will utilize gages to measure the volume of water introduced and diverted from Folsom Reservoir. The Contractor maintains gages to ensure compliance with minimum streamflows as required by the Federal Energy Regulatory Commission (FERC) license for the El Dorado Hydroelectric Project No. 184 (Project 184). Additionally, the Contractor maintains measurement devices for documenting volumes of water diverted from: 1) Folsom Reservoir at Folsom Lake Raw Water Pump Station, and 2) Forebay Reservoir at the Main Ditch to Reservoir 1.

For each month, consistent with Article 4(b) before the 15th day of the succeeding month, the Contractor will provide all reports of daily operations that contain the following information:

1. Gaging records documenting the total volume (af) delivered to Folsom Reservoir calculated from average daily flow below the Kyburz diversion dam (A12; USGS 11439500)
2. Gaging records documenting the total volume (af) delivered to Folsom Reservoir calculated from total daily volume through the El Dorado Powerhouse (A19)
3. Gaging records documenting the total volume (af) diverted from Folsom Reservoir at the Folsom Lake Raw Water Pump Station
4. Gaging records documenting the total volume (af) released from Caples Lake calculated from average daily flow measured on Caples Creek at Caples Lake outlet (A6; USGS 11436999)
5. Gaging records documenting the total volume (af) released from Silver Lake calculated from average daily flow measured on Silver Fork at the Silver Lake outlet (A9; USGS 11436000)
6. Gaging records documenting the total volume (af) of leakage from Silver Lake calculated from average daily flow measured on Oyster Creek at Highway 88 (A24)
7. Gaging records documenting the total volume (af) released from Lake Aloha calculated from average daily flow measured on Pyramid Creek above Highway 50 (A40; USGS 11435100)

8. Gaging records documenting the total volume (af) diverted into the El Dorado Canal calculated from average daily flow measured on Canal at diversion (A11; USGS 11439000)
9. Gaging records documenting the total volume (af) diverted at Main Ditch to Reservoir 1 for consumptive use calculated from average daily flow measured on Forebay outlet to EID (A18)
10. Gaging records documenting the total volume (af) diverted at Hazel Tunnel to Jenkinson Lake for consumptive use calculated from average daily flow measured at Hazel Tunnel Diversion (H1)

### **Water Accounting**

Direct diversion rights from the South Fork American River are available from November 1 through July 31. Direct diversions are not available August 1 through October 31 pursuant to the conditions of Permit 21112; therefore, water diverted to storage will be released from Lake Aloha, Caples Lake, and Silver Lake for downstream uses. The approximate volume from each water source will be included during each monthly reporting.

The quantity of Non-Project Water made available for diversion at the Contractor's Point of Delivery shall be calculated as follows:

1. Nov 1 - July 31:  $(1 - \text{Conveyance Loss}) \times \{\text{South Fork of the American River below Kyburz diversion dam (A12) + El Dorado Powerhouse (A19)}\}$
2. Aug 1 - Oct 31:  $(1 - \text{Conveyance Loss}) \times \{\text{Caples Creek at Caples Lake Outlet (A6) + Silver Fork at Silver Lake Outlet (A9) + Silver Lake Leakage (A24) + Pyramid Creek above Highway 50 (A40)}\} - \{\text{the greater of [0] or [Forebay outlet to EID (A18) + Hazel Tunnel (H1) - NF]}\}$

Where: Natural Flow (NF) =  $\{[\text{South Fork of the American River below Kyburz diversion dam (A12) + El Dorado Canal at diversion (A11)}] - [\text{Caples Creek at Caples Lake Outlet (A6) + Silver Fork at Silver Lake Outlet (A9) + Silver Lake Leakage (A24) + Pyramid Creek above Highway 50 (A40)}]\}$

## **Exhibit F**

### **WATER QUALITY MONITORING**

This study plan is a collaborative effort and has been developed to satisfy the water quality monitoring requirements set forth in the Project 184 Settlement Agreement (EID 2003), U.S. Forest Service 4(e) License Condition No. 37 (USFS 2003), and the California State Water Resources Control Board Section 401 Clean Water Act Water Quality Certification Condition No. 15 (SWRCB 2006). The Project 184 Ecological Resources Committee (ERC) conducted a field visit in June of 2005 to review water quality monitoring sites used in this plan.

The scope of this plan has been defined by the water quality monitoring requirements set forth in these documents and has been agreed to by El Dorado Irrigation District (EID).

#### **1.0 Background**

The major part of the project area of the Project lies within the South Fork American River portion of the Sacramento River Basin. According to the Central Valley Region Basin Plan (CVRWQCB 1998), the designated beneficial uses for this basin include municipal water supply, power supply, contact recreation, non-contact recreation, canoeing and rafting, warm water fish habitat, coldwater fish habitat, coldwater fish spawning, and wildlife habitat. The designated beneficial uses for Lake Aloha, Silver Lake, and Caples Lake include municipal water supply, irrigation, stock watering, industrial process supply, power production, contact recreation, non-contact recreation, warm water and coldwater fish habitat, coldwater fish spawning, and wildlife habitat. Echo Lake and Echo Creek lie within the Lahontan Basin. The designated beneficial uses of these facilities include municipal water supply, groundwater recharge, navigation, recreation, commercial and sport fishing, coldwater fisheries, wild trout, and fish spawning (LRWQCB 1995).

Management of Project 184 has the potential to affect water quality in the basin and the ability to meet the standards that have been established for each basin. This monitoring plan has been designed to provide information regarding overall water quality in the vicinity of Project 184 (Project), identify potential water quality problems related to the Project, and where the Project can control such factors, and develop resource measures for the protection, mitigation and enhancement of water quality.

#### **2.0 Study Plan Objectives**

1. Characterize water quality under current Project operations by directly monitoring water quality.

2. Determine if water quality objectives of Basin Plans (and other applicable water quality criteria) are met and assess whether designated beneficial uses of Basin Plans are protected. This will ultimately be determined by the SWRCB 401 consultation process.
3. Identify any project-controllable resource measures for the protection, mitigation, and enhancement of water quality.

### **3.0 Study Area and Sampling Locations**

The study area of Project 184 includes the main dam and 11 auxiliary dams that comprise the 5,179 acre-foot Lake Aloha, Echo Lake Dam and the 1,943 acre-foot reservoir, the Echo Conduit that transfers water from Lake Aloha into the South Fork of the American River, the main and auxiliary dams at Caples Lake as well as the 20,338 acre-foot reservoir, Silver Lake Dam and 8,640 acre-foot reservoir, the El Dorado Diversion Dam, the El Dorado Canal, Alder Creek Diversion Dam, Mill Creek Diversion Dam, Bull Creek Diversion Dam, Carpenter Creek Diversion Dam, Ogilby Creek Diversion Dam, Esmeralda Diversion Dam, No Name Creek Diversion Dam, and El Dorado Forebay Dam and 356 acre-foot reservoir (FERC 2003).

The following sampling locations were identified by the Ecological Resources Committee (ERC), USFS, and SWRCB to be included in the water quality monitoring plan:

WQ1.....	Echo Creek below Echo Lake Dam
WQ2.....	Pyramid Creek below Lake Aloha Dam
WQ3.....	Caples Creek below Caples Lake Dam
WQ4.....	Silver Fork American River below Silver Lake Dam
WQ5.....	South Fork American River upstream of Kyburz Diversion Dam
WQ6.....	South Fork American River downstream of Kyburz Diversion Dam
WQ7.....	Carpenter Creek above Carpenter Creek Diversion Dam
WQ8.....	Carpenter Creek below Carpenter Creek Diversion Dam
WQ9.....	No Name Creek above No Name Creek Diversion Dam
WQ10.....	No Name Creek below No Name Creek Diversion Dam
WQ11.....	Alder Creek above of Alder Creek Diversion Dam
WQ12.....	Alder Creek below of Alder Creek Diversion Dam
WQ13.....	Mill Creek above Mill Creek Diversion Dam
WQ14.....	Mill Creek below Mill Creek Diversion Dam
WQ15.....	Bull Creek above Bull Creek Diversion Dam
WQ16.....	Bull Creek below Bull Creek Diversion Dam
WQ17.....	Ogilby Creek above Ogilby Creek Diversion Dam
WQ18.....	Ogilby Creek below Ogilby Creek Diversion Dam

WQ19.....Esmeralda Creek above Esmeralda Creek Diversion Dam  
WQ20.....Esmeralda Creek below Esmeralda Creek Diversion Dam

It is anticipated that many of the water quality sampling locations will correspond to water temperature monitoring and/or gaging stations that currently exist as part of the Project or have been required for installation as part of the relicensing agreement (see Temperature and Water Quality Monitoring Map).

#### **4.0 Data Collection**

##### **4.1 Sample In situ Field Parameters**

Basic water quality parameters, including temperature, dissolved oxygen, conductivity, and pH will be measured at all general sampling locations using a water analyzer or equivalent multi- sensor probe. This information will be stored in the probe until all sites have been sampled. At that time, all information will be downloaded into a Project database. Probes will be calibrated prior to each field visit according to manufacturer specifications. Additionally, the probe will be calibrated to track changes in the barometric pressure prior to sampling to adjust for changes in elevation. Immediately following sample collection the sampler will document local influences (stream clarity, weather, and other pertinent notes) and take a photo of the sample site to document conditions at the time of sampling. Equipment performance standards will be updated based on a review of current available technology that is economically achievable.

##### **4.2 Laboratory Parameters**

For those parameters that cannot be measured while in the field, water samples will be collected using a swing sampler or similar instrument and taken to a certified laboratory for analysis. Those parameters to be analyzed in a laboratory include turbidity, total suspended sediments, alkalinity, hardness (as calcium carbonate), nitrate (measured as nitrate plus nitrite), copper, aluminum, and coliform both total and fecal (enumeration) (see Appendix A).

A focused fecal coliform sampling effort will be conducted to demonstrate compliance with Basin Plan objectives requisite for protection of waters used for contact recreational activities. Fecal coliform screening samples will be collected in surface waters using the sampling protocols as in Section 4.4. If fecal coliform is detected above standard levels, additional field monitoring will be performed to identify source.

The laboratory will provide for each parameter sample, the laboratory's current method detection limit, reporting limit, and practical quantification

limit as appropriate. The lab will attempt to obtain, and report detection limits at or below the adjusted maximum regulatory criteria in the Clean Water Act and Environmental Protection Agency standards.

#### **4.3. Sample Handling**

All samples will be taken from the riverbank in flowing water (sampler upstream) at each sample location. The date and time that each sample is collected, sampling site, jar number, and other pertinent information will be recorded in the field for each sample. The grab sample jar will be labeled, preserved, stored, and delivered to a State certified water quality laboratory and the contents analyzed using laboratory methods adequately sensitive to detect parameters at or below regulatory criteria levels. Where applicable, samples will be stored per laboratory standard operating procedures. Compliance with laboratory-approved storage procedures and with maximum holding periods allowed by lab method(s) will be documented, and a chain-of-custody record will be maintained for each sample jar.

Because of the short laboratory holding times of certain parameters, EID and the laboratory will initiate special procedures to ensure that information is not lost due to expiration of the holding times. Constituents with short holding times include certain nutrients (e.g., Nitrate/Nitrite have 48-hour unpreserved holding times) and TSS (7-day holding time). In these instances, the laboratory will be directed either to analyze for the specific parameters immediately upon arrival or to chemically preserve the samples for later analysis. Chemical preservation will only be performed in circumstances where the preservation does not influence the detection limit of the analytical technique. If necessary, preservatives may also be placed into the sample jars prior to collecting the samples. If this preparation occurs, then the samplers will be notified of the jar constituents and any special handling instructions prior to entering the field.

#### **4.4. QA/QC**

All samples will be collected, handled and delivered to the lab consistent with specific EPA methods or other approved sampling/handling protocols including but not limited to Standard Methods for the Examination of Water and Wastewater (1998). Appropriate QA/QC methods and documentation will be followed. Field QA/QC methods may vary somewhat by chemical parameters, but certain methods will be uniformly applied to all field sampling. Clean sampling techniques will be applied throughout the sampling effort. All sample bottles will be prepared by a California state-certified laboratory (ELAP). The laboratory will prepare all sample bottles and, where necessary, place the appropriate amount and type of preservative in sample bottles. All field crew members collecting

samples will wear gloves to prevent possible sample contamination. The labeled samples will be placed in closed, lightproof coolers filled with ice. Samples will be delivered to the laboratory daily during sampling trips. Iced samples will be delivered to the laboratory within the specified holding time. Quality control in the field will be assured by accurate and thoroughly completed sample labels, field sheets, chain of custody, and sample log forms. Sample labels will include sample identification code, date, time, stream name, sampling location, collector's name, sample type and preservative if applicable. During situations where sampling becomes a safety hazard and accessibility is absent, EID will notify the ERC upon completion of the sampling.

## **5.0 Reporting**

The data collected under the monitoring protocols identified in this plan will be electronically compiled and distributed annually by January 31, to the FS, ERC, and SWRCB. EID will provide annual data updates to the ERC during the annual update meeting, which occurs prior to March 15. A draft annual water quality report will be circulated to the ERC for review and consideration at least two weeks prior to the annual meeting. Based on the results of the annual meeting, EID shall submit an annual report to FS, ERC, SWRCB, and FERC by June 30 of each year. The report shall summarize the results of any ongoing monitoring or study efforts, any changes to be implemented under the license, and a summary of any unresolved issues and proposed actions to resolve each issue. All ERC members and FS and SWRCB shall have 30 days to review and comment on the draft annual report prior to its submittal to FERC. The final annual report shall be distributed to FS, ERC, and SWRCB after submission to FERC.

The annual report will include the issues addressed, objectives, study area including sampling locations, methods, laboratory reports and QA/QC, analysis, and results. A summary of results will be provided in tabloid format that shall include specific method detection limits for each parameters and analytical data reported. The report will also include relevant graphs depicting the seasonal relationship between DO, temperature, pH, and other parameters as necessary at all locations. Additional graphs will be provided to more clearly demonstrate any changes in specific water quality parameters over time or longitudinal movement of flow through the system. Discussion appropriate to results and supportive of analyses and conclusions will be provided. All reports will be prepared in a format so that they can easily be reviewed by the ERC and filed with the Federal Energy Regulatory Commission (FERC) after approval. E-mail updates and CD of all reporting information will be provided to the ERC. Additionally, EID will coordinate with other agencies to share water quality data or additional important information, where feasible.

## **6.0 Schedule**

Water quality sampling to evaluate changes in water quality associated with changes in the stream flow regime will be completed in the first, third, and fifth years following ERC approval of this plan. If additional sampling is needed after the fifth year, frequency will be determined cooperatively between the SWRCB, USFS, the ERC, and EID. Once sufficient data is obtained to indicate lack of a water quality issue, some parameters and/or sampling locations may be removed from the monitoring program.

Water quality data will be collected eight times per year during the first three monitoring years. All samples other than fecal coliform will be collected once each during March, May, June, July, August, September, first storm of the season, and December. Fecal coliform samples will be collected May through September during the first three monitoring years. Samples will be collected no less than five times within a thirty-day period and will capture days with high recreational periods.

Each round of sampling will occur over a two to three day period due to the number of locations, distance between locations, sample location accessibility, and laboratory's ability to process the samples. The sampling will be conducted concurrent with the monthly stream gage monitoring, where feasible. The sampling schedule will be established at the beginning of each sampling year to maintain consistency.

## **7.0 Literature Cited**

Central Valley Regional Water Quality Control Board. 1998. Water Quality Control Plan (Basin Plan) for the Central Valley Region. Sacramento River and San Joaquin River Basins. Published by the California Regional Water Quality Control Board, Central Valley Region and the State Water Resources Control Board, Sacramento.

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State Water Resources Control Board of California. 2006. Clean Water Act Section 401 Technically-Conditioned Water Quality Certification for Federal Energy Regulatory Commission El Dorado Hydroelectric Project (FERC No. 184).

United States Forest Service. 2003. Forest Service Final Terms and Conditions Provided Under 18 CFR 4.34(b)(1) In Connection With the Application for Relicensing of The El Dorado Hydroelectric Project (FERC No. 184). October 31, 2003.

APPENDIX A Analytical Parameters				
Constituent	Units	Detection Limit	Method	Rationale
Temperature	°C	-	Water Analyzer	Indicator of water quality
Dissolved Oxygen	mg/L	0.1	Water Analyzer	Indicator of water quality
Conductivity	µmhos/cm	1	Water Analyzer	Indicator of water quality
pH	Units	-	Water Analyzer	Indicator of water quality
Turbidity	NTU	0.2	Water Analyzer	Indicator of water quality
Total Suspended Sediments	mg/L	1.0	EPA 160.2	Indicator of water quality
Alkalinity	mg/L	5.0	SM 2320 B/ EPA 310.1	Indicator of water quality
Hardness (Calcium Carbonate)	mg/L	1.0	SM 2340C	Indicator of water quality
Nitrate (Nitrate plus Nitrite)	mg/L	0.05	EPA 300.0	Indicator of nutrient loading
Copper	µg/L	1.0	EPA 200.8	Toxic to aquatic species
Aluminum	mg/L	0.05	EPA 200.8	Toxic to aquatic species
Total Coliform	MPN	2	SM 9221 A, B, C	Indicator of water quality
Fecal Coliform	MPN	2	SM 9221E (MTF/EC)	Indicator of water quality

Figure 5: Analytical Parameters

MPN = Most Probable Number  
 SM = Standard Methods 20th Edition  
 EPA = Environmental Protection Agency  
 Mg/L = milligrams per liter  
 µg/L = micrograms per liter

Note: Methods may be changed based on future approved EPA and Standard Method updates.

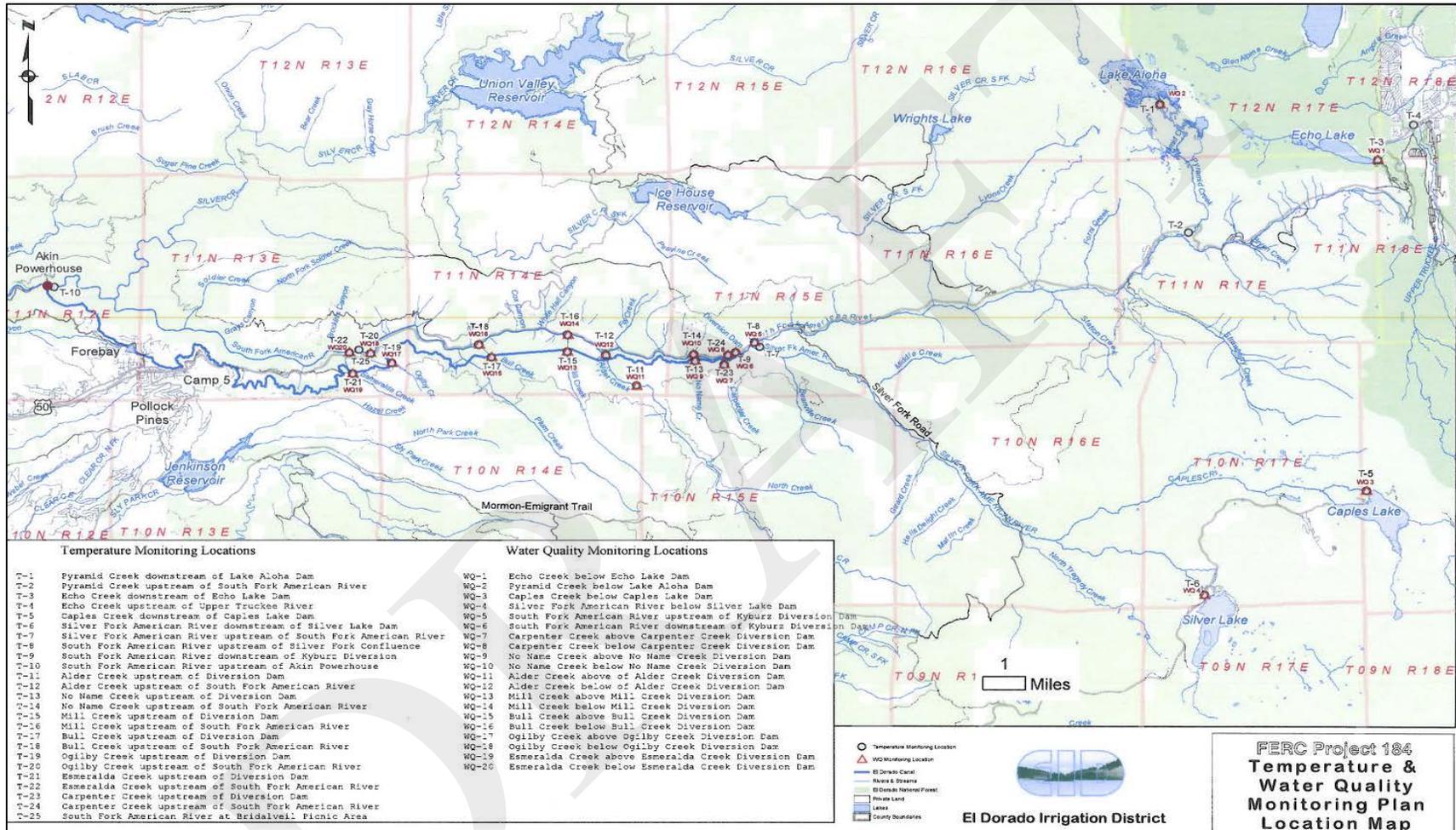


Figure 6: FERC Project 184. Temperature and Water Quality Monitoring Plan Location Map



## **Exhibit G**

### **FOREGONE POWER**

#### **Formula to Estimate Foregone Power Costs**

1. Ten Year Avg KWh/AF efficiencies (2001-2011):  
Folsom 259.84 KWh per AF  
Nimbus 33.81 KWh per AF
2. Average Annual Market Price = \$36.00 per MWh
3. Formula:  
Folsom (259.84) + Nimbus (33.81) X Average Annual Market Price =  
\$/AF of Warren Act Water  
1000KWh  
  
$$((259.84 \text{ KWh/AF} + 33.81 \text{ KWh/AF})/1000) \times \$36 = \$10.57/\text{af}$$
 (Estimated cost per acre foot for foregone power due to EID diverting Project 184 Warren Act water at Folsom Reservoir).
4. The Contractor can then take the \$10.57/af and multiply this number by the amount of Project 184 water that they will divert in a Year, to come up with the total estimated cost of foregone power resulting from diverting this water at Folsom Reservoir.
5. The Estimated cost per acre-foot for foregone power diversion of Project 184 water will be trued up to an actual number at the end of each Year.

#### **Advance Payment and True Up Process For Foregone Power Costs**

A Letter of Agreement (LOA) will be established with the Contractor which will document the process for the advance payment of the estimated foregone power cost pursuant to Article 3(f.1) and the true up process for the actual foregone power costs each Year