

**AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
MINIDOKA PROJECT**

**AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND A&B IRRIGATION DISTRICT
TO TRANSFER TITLE TO FEDERALLY OWNED FACILITIES, INTERESTS, AND
LANDS ASSOCIATED WITH THE WATER CONVEYANCE SYSTEM WITHIN THE
NORTH SIDE PUMPING DIVISION**

TABLE OF CONTENTS

| | |
|---|----|
| 1. Preamble | 2 |
| 2. Recitals..... | 2 |
| 3. Scope of Contract..... | 3 |
| 4. Definitions..... | 3 |
| 5. Determination | 4 |
| 6. Commitments of the Parties..... | 6 |
| 7. Compliance with Federal Laws | 14 |
| 8. Congressional Notice of Title Transfer..... | 15 |
| 9. Notices | 15 |
| 10. Signatures..... | 17 |
| EXHIBIT A - Project Facilities to be Transferred..... | |
| EXHIBIT B - Description of Project Lands to be Transferred | |
| EXHIBIT C - Property Location Maps..... | |
| EXHIBIT D – Third Party Encumbrances..... | |
| EXHIBIT E - Categorical Exclusion and Board of Directors Affirmation | |
| EXHIBIT F – Board of Directors Resolution - CERCLA Release of Liability | |
| EXHIBIT G - Valuation Memorandum..... | |
| EXHIBIT H - Board of Directors Resolution – Approval of Title Transfer Package | |
| EXHIBIT I - Quitclaim Deed | |
| EXHIBIT J - Patent..... | |
| EXHIBIT K – Grant of Easement..... | |
| <u>EXHIBIT L. Memorandum of Understanding Between Bureau Of Reclamation and Bonneville Power Administration, Dated December 23, 1944.....</u> | |

EXHIBIT M. Notice to Congress

**AGREEMENT BETWEEN THE UNITED STATES OF AMERICA
AND A&B IRRIGATION DISTRICT
TO TRANSFER TITLE TO FEDERALLY OWNED FACILITIES, INTERESTS, AND
LANDS WITHIN THE NORTH SIDE PUMPING DIVISION**

1. PREAMBLE

- a. THIS AGREEMENT (hereinafter referred to as “Agreement”) is made this _____ day of _____, 2020, pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019, (Pub. L. 116-9, Title VIII, Subtitle A; 133 Stat. 804; 43 U.S.C. 2902, et seq.) (hereinafter referred to as “Dingell Act”); Act of June 17, 1902 (Ch. 1093, 32 Stat. 388)) and acts supplementary thereto or amendatory thereof (hereinafter referred to as the “Federal Reclamation Laws”) between the UNITED STATES OF AMERICA (hereinafter referred to as the “United States”), acting through the Department of the Interior Bureau of Reclamation (hereinafter referred to as “Reclamation”), and the A&B Irrigation District (hereinafter referred to as the “District”), organized and existing under the laws of the State of Idaho, with its principal place of business and office in Rupert, Idaho.

2. RECITALS

- a. The Dingell Act provides for the transfer of title to eligible Reclamation project facilities of an authorized irrigation project to qualifying entities on the completion of repayment of capital costs without further authorization from Congress; and
- b. The Reclamation Minidoka Project (hereinafter referred to as “Project”) and the North Side Pumping Division (hereinafter referred to as “Division”) of the Project was authorized by Congress on September 30, 1950 (64 Stat. 1083, P.L. 81-864); and
- c. When the United States constructed the Division, the United States withdrew certain Federal lands from the public domain, as well as acquired additional lands, rights-of-way and easements under the Federal Reclamation Laws, Idaho Code 58-604, and the Act of August 30, 1890 (hereinafter referred to as the “Canal Act”); and
- d. The District is a recognized irrigation district organized under the laws of the State of Idaho and responsible for the delivery of irrigation water to approximately 82,600 acres of irrigable land within the Division; and
- e. In accordance with the authorizing legislation for both the Project and Division, the District and the United States entered into Contract 14-06-100-2368, executed on February 9, 1962, for the repayment of the District’s allocated share of the Project

construction costs and transfer of operation, maintenance, and care in accordance with Reclamation Law; and

- f. The District has performed operation, maintenance, and care of the water pumping, conveyance, and distribution system for the Division since March 1, 1966 and has performed such operation, maintenance, and care in a manner satisfactory to the United States; and
- g. The District will provide compensation for its repayment obligation in accordance with Contract 14-06-100-2368 to the United States during the execution of this title transfer. The repayment obligation of \$842.18 (as of June 2020) has been included in the net present valuation and will be provided to Reclamation following the execution of this agreement; and,
- h. The District requested title to the project facilities associated with the water conveyance system for the Division on September 12, 2016, and Reclamation responded to this request on November 23, 2016. The District's request was put on hold until the passing of the Dingell Act as described in this agreement; and
- i. The District and the United States executed a Memorandum of Agreement (MOA) R20MA11701 on November 13, 2018, defining the roles and responsibilities related to accomplishing title transfer of the Division.

NOW THEREFORE, it is hereby mutually agreed as follows:

3. SCOPE OF CONTRACT

This contract is supplemental to the contracts between the District and the United States dated February 9, 1962 (Contract 14-06-100-2368), as amended, and except as modified herein, the provisions of those contracts shall remain in full force and effect to the extent they are not inconsistent with the provisions of this contract.

4. DEFINITIONS

Unless otherwise noted, the definitions set forth in the Dingell Act at 43 USC § 2902 and the following definitions apply to this Agreement:

- a. "Agreement" means this agreement between the United States and the District.
- b. "Division" means the North Side Pumping Division, located in southern Idaho in Minidoka and Jerome counties.
- c. "Parties" means both the United States, acting by and through Reclamation and the District.

- d. "Project" means the Minidoka Project, located in the State of Idaho.
- e. "Project Facilities to be Transferred, Project facilities, or facilities" shall mean the eligible facilities that are District operated and maintained and that were constructed by the United States for the pumping and water conveyance system for the Division, along with certain lands and interests in land, as identified in Exhibits A, B, and C, and described more fully below.

5. DETERMINATIONS

- a. Determinations Required. The Dingell Act requires that the United States, acting through Reclamation, make certain findings and determinations regarding the eligibility of the facilities to be transferred and the qualifications of the District. These findings and determinations are set forth below or otherwise contained in this Agreement.
- b. The District is a qualifying entity under 43 U.S.C. § 2902(5). The District is a lawfully organized political subdivision the State of Idaho and the current operator of the project facilities for the water conveyance system for the Division. Idaho Code 43-101(1) authorizes the creation of irrigation districts as a political subdivision of the state and provides those districts with certain authorities in connection with the development, operation and maintenance of irrigation systems. The District was created under Title 43 of the Idaho Code in 1960. The District remains organized in this fashion and operates pursuant to equitable rules and regulations adopted for the distribution of water pursuant to the provisions of Idaho Code 43-304. The District is the current operator and has been since March 1, 1966, and is responsible for the operation, maintenance and care of the project facilities for the water pumping, conveyance, and distribution system for the Division pursuant to the Contract, 14-06-100-2368. The District has technical and financial capacity to, and intends to, continue to operate, maintain, and care for the Project Facilities to be Transferred for the same purposes for which the property has been managed under the reclamation laws in conjunction with the water pumping, conveyance, and distribution system for the Division.
- c. The Project Facilities to be Transferred are eligible facilities under 43 U.S.C. § 2902(2), (3) and 2904. Reclamation has screened the Project Facilities to be Transferred by an examination in the field and of the records of Reclamation and the District, as well as by the historic and current uses and determined that they are eligible for transfer pursuant to the Pub. L. 116-9. A reservation will be included in the conveyance instruments for public access to be recognized by the District for those identified parcels that are contiguous and provide access to other Federal lands. The eligibility requirements for the facilities to be included in a title transfer set forth in the Dingell Act and agency policy are met and reflected as determinations or conditions of this Agreement.

- d. Repayment Obligation Fulfilled. The District will fulfill its repayment obligation in accordance with Contract 14-06-100-2368 to the United States during the execution of this title transfer and final negotiated payment. The remaining balance of \$842.18 (as of June 2020) has been included in the net present valuation consistent with 43 U.S.C. § 2904.
- e. Financial Interest of United States. The transfer of title is in the financial interest of the United States. Upon review of the Economic Technical memorandum and associated documentation, Reclamation concludes the transfer is in the financial interest of the United States. In reaching this conclusion, Reclamation considered whether the consideration to be paid to the government plus any additional benefits to the United States equals or exceeds the value of outstanding repayment obligations, revenue streams and withdrawn land value to the United States. The Economic Technical memorandum demonstrates the compensation of \$761,152.00 is equivalent to the net present value of any repayment obligation, including aid to irrigation, to the United States or other income stream that the United States derives from the eligible facilities to be transferred, as of the date of the transfer in addition to the market value of any withdrawn land. Furthermore, Reclamation anticipates that the United States will receive certain unquantified benefits from the transfer in the form of avoided administrative and oversight costs, reduced Federal liability arising from ownership of the Project Facilities to be Transferred, and fulfillment of the self-governance objectives of the Reclamation programs.
- f. Trust Responsibilities. This transfer of title does not affect Reclamation trust responsibilities for any federally recognized Indian Tribe(s). The Division and District are located within the area covered by the 1868 Treaty of Fort Bridger with the Shoshone-Bannock Tribes (SB Tribes). Reclamation began communicating the proposed title transfer process early on during quarterly tribal meetings. Reclamation staff collaborated with Tribal staff regarding the Federal assets to be conveyed to the District and the associated process. The SB Tribes have not communicated any concerns or disagreements with the transfer of title.
- g. Treaty Compliance. This transfer of title complies with any applicable international and Tribal treaties and agreements and interstate compacts and agreements. Reclamation, in working with the District, beneficiaries, and stakeholders to assess potential adverse impacts to the interests of beneficiaries and stakeholder, have determined no adverse impacts throughout the process and this agreement.
- h. Public Interest Protected. This transfer of title protects the public aspects of the Project Facilities to be Transferred. Reclamation staff have worked with the District, beneficiaries, and stakeholders to assess potential adverse impacts to the interests of beneficiaries and stakeholders. No adverse impacts have been determined as documented throughout the process.
- i. No Adverse Impact on Water Delivery. This transfer of title will not result in an

adverse impact on fulfillment of existing water delivery obligations, consistent with historical operations and applicable contracts. The District will continue to fulfill existing water delivery obligations.

- j. No Unmitigated Environmental Effect. The environmental review process described below in section 7.a of this Agreement confirms there is no unmitigated environmental effect associated with this transfer.
- k. Power Uses Not Affected. The transfer will not adversely impact applicable Federal power rates, repayment obligations or other project power uses.
- l. ESA Compliance for Dam and Diversion Works. No dam or diversion works are included in the Project Facilities to be Transferred through this action. Therefore, no determination on this point is required for this transfer. ESA compliance for this transfer is discussed in section 7.b. below.
- m. Consultation. This Agreement has been developed in consultation with any existing water and power customers affected by the conveyance of the eligible facility in accordance with 43 U.S.C. § 2904(a)(2). The only existing water and power customers affected by the conveyance of the eligible facility are the project beneficiaries who directly benefit from the Project, and are represented by the elected A&B Irrigation District Board of Directors who are in support of this transfer as reflected by its September 11, 2020 Resolution.

6. COMMITMENTS OF THE PARTIES

- a. The District shall:
 - i. Acceptance of title. The District shall accept title to Project Facilities to be Transferred “as is” without warranty.
 - ii. Operation of Transferred Facilities. The District shall manage and use the Project Facilities to be Transferred for substantially the same purposes for which they are being used at the time of this Agreement. This commitment was affirmed on December 10, 2019, when the District Board passed Official Resolution No. 2019-04, whereby the District Board resolved to continue to operate and maintain the Project Facilities to be Transferred consistent with current and historical use.
 - iii. Consideration for title. The District shall pay to the United States a lump sum amount equal to \$761,152.00. This amount represents the following as identified in Exhibit G:
 - 1. The net present value of facilities;
 - 2. The appraised value of the withdrawn lands;

iv. District Resolution. In a Resolution passed December 10, 2019, the District verified and affirmed its commitment to the title transfer and its eligibility as a qualifying non-federal entity, including the applicability of the CE Qualification Factors discussed in section 7.a herein, as identified in Exhibit E. Specifically, the District affirmed:

1. District will continue to operate and maintain the Project Facilities to be Transferred consistent with current and historical use.
2. District is not aware of any competing demands for use of the Project Facilities to be Transferred, with exception of those demands accommodated by existing contractual arrangements.
3. District ensures that the Project Facilities to be Transferred are not hydrologically integrated with other Project facilities, thereby impacting other contractors, stakeholders or activities, with the exception of those impacts accommodated by existing contractual arrangements.
4. District ensures that issues involving existing contracts and agreements, and interstate compacts and agreements, would be resolved, and treaty and international agreement obligations fulfilled prior to transfer.
5. District will assume responsibility for all identified commitments and agreements into the future related to the Project Facilities to be Transferred.

v. Final District Resolution. In a Resolution passed September 11, 2020, the District verified and approved for submission to the Commissioner of Reclamation and to Congress, the draft final title transfer agreement package including: title transfer agreement, transfer eligibility report, quitclaim, patent, easement, and supplemental project use power contract, as identified in Exhibit H.

vi. Recording. The District, at its own cost, may record a copy of this Agreement including Exhibit A, B, and C (description of the Project Facilities to be Transferred) and the duly executed deeds with the appropriate local jurisdiction as may be necessary.

b. The United States shall:

- i. Transfer of Title. Upon receiving payment of the stated compensation from the District, the United States shall transfer all of its right, title, and interest in

and to the Project Facilities to be Transferred associated with the water pumping, conveyance, and distribution system for the Division as further described herein and pursuant to the term and conditions herein, with exception to those facilities excluded from this title transfer as defined herein. Specifically, Reclamation shall:

1. Quitclaim Deed. Convey to the District by quitclaim deed, all the United States' right, title, and interest in the constructed, operated, and maintained irrigation facilities, three (3) parcels of acquired land, and all rights-of-way and easements whether directly acquired under the Federal Reclamation Laws, granted and reserved under Idaho Code 58-604, or reserved by the Canal Act and exercised or in use by the United States for the presently constructed irrigation facilities; as described in Exhibit I;
 2. Patent. Convey to the District by patent, all the United States' right, title, and interest in fourteen (14) parcels of withdrawn land, as described in Exhibit J;
 3. Assignment. Assign to the District all of its rights, duties, obligations, and responsibilities which exist as a result of third-party authorizations or agreements, including the granting of any right to use, cross, or occupy any of the Project Facilities to be Transferred, as described on Exhibit D. The District shall honor the identified third-party authorizations and agreements for the length of those agreements. Reclamation agrees to cooperate with the District in identifying and providing to the District all third-party authorizations and agreements.
- ii. Description of Facilities. The Project Facilities to be Transferred shall include:
1. All Interests. All portions of the constructed, operated, and maintained irrigation facilities of the water pumping, conveyance, and distribution system, improvements and appurtenances thereunto belonging or in anywise appertaining, including but not limited to pumping plants (2), buildings, pumps, wells, diversion and control structures, fixtures and improvements thereon whether or not permanently attached thereto, including all drains, canals/laterals, pipelines, wasteways, ponds, auxiliary and electrical equipment, and roads located thereon;
 2. Seventeen Fee Simple Parcels. A total of 17 parcels of land, including both the surface and mineral estates, encompassing about 1,020 acres; three parcels (61.66 acres) of acquired land and fourteen parcels (958.75 acres) of withdrawn land, together with all improvements and appurtenances thereunto belonging or in anywise appertaining, including but not limited to all buildings, pumping plants,

transformers, Reclamation-owned power transmission lines and fixtures, whether or not permanently attached; and

3. Rights-of-Way and Easements. All rights-of-way and easements whether directly acquired under the Federal Reclamation Laws, granted and reserved under Idaho Code 58-604, or reserved by the Canal Act and amendments thereof and supplemental thereto and exercised or in use by the United States for the presently constructed project facilities of the water pumping, conveyance, and distribution system for the Division, together with the right to enter upon the rights-of-way and easements for the purposes of repairing maintaining, or reconstructing the irrigation, drainage, or other facilities located thereon; together with all and singular the improvements and appurtenances thereunto belonging or in anywise appertaining, including but not limited to all buildings, pumps, diversion and control structures, wells, Reclamation-owned transmission lines, transformers, fixtures and improvements thereon whether or not permanently attached thereto, including all drains, laterals, pipelines, wasteways, wells, ponds, and roads located thereon.
4. Maps. The map of the Project Facilities to be Transferred as depicted in the A&B Irrigation District Wells and Distribution System Map, 1983, presented as Exhibit A to this Agreement, identifies the constructed irrigation facilities and all rights-of-way and easements whether directly acquired, granted or reserved under Idaho Code 58-604 or reserved by the Canal Act, and the Property Location Maps, presented as Exhibit C to this Agreement, identifies the project lands to be transferred and included in the easement to be issued to the District, as well as the associated third-party encumbrances.
5. Additional Interests. The Parties have sought to identify all Project Facilities to be Transferred. To the extent that additional facilities, parts of facilities, and/or associated land interests are subsequently identified that all parties agree should have appropriately been included, such additional facilities, parts of facilities, and/or associated land interests will, subject to necessary regulatory compliance (e.g. NEPA, NHPA, ESA) activities, if any, and in coordination with involved stakeholders, automatically be considered part of this TTA and an appropriate deed executed by Reclamation if needed.

iii. Reserved Interests of the U.S.

1. As part of the transfer of title, the United States will reserve perpetual public access easements across four (4) of the parcels of land to be transferred that will provide access to adjacent and contiguous Federal lands. The easements will be for a width of 50-feet, 25-feet from the

centerline, for certain existing roads. The easements will be noted in the conveyance instrument and will include but are not limited to surveying, constructing, erecting, operating, adding to, altering, inspecting, maintaining, repairing, reconstructing, and removing said roads, and includes other fixtures and appurtenances connected therewith, together with the right of ingress and egress. The District agrees to not interfere with public access unless otherwise agreed in coordination with Reclamation.

2. The transfer of title to the Project Facilities to be Transferred will be completed subject to the rights of the United States, as administered by and through the Department of Energy, Bonneville Power Administration (hereinafter referred to as BPA), in accordance with the *Memorandum of Understanding Between the Bureau of Reclamation, United States Department of the Interior and Bonneville Power Administration, United States Department of the Interior with Respect to Substation Sites and Crossings upon Withdrawn and Acquired Lands and Easements and also Rights-of-Way Reserved by Law* (hereinafter referred to as 1944 MOU), dated December 23, 1944, presented as Exhibit L to this agreement, as well as the following conditions:
 - a. BPA and its successors or assigns have the right to enter upon and to construct, repair, rebuild, operate, maintain and patrol one or more electric power transmission and distribution lines and one or more communication lines, including the right to erect poles or other transmission line structures, wires, cables, and the appurtenances necessary thereto, upon the rights-of-way described in said Schedule "A" of the 1944 MOU, the right to clear said rights-of-way and keep the same clear of brush, timber, inflammable structures and fire hazards; and the further right to remove danger trees, if any, located beyond the limits of the said rights-of-way but upon lands under the administration of Reclamation or lands transferred to the District.
 - b. The District shall acknowledge BPA's requirement to maintain at least 50-feet of clearance from BPA's poles, structures or guy wires, whether it be vegetation, roads, fences, utilities, pipelines or any other improvements, as well as at least 25-feet of clearance from the top of any vegetation and the lowest point of BPA's conductors (lines), which clearance distance is measured from the conductor to the vegetation at maximum operating sag (the theoretical position of the conductor when operating at 100 degrees Celsius). Both BPA and the District agree that the District's existing infrastructure (i.e. roads, fences, utilities, pipelines, canals/laterals, etc.) located within

the 50-foot clearance area will not need to be moved and do not create an unreasonable interference.

- c. The District shall not store equipment, materials, waste, flammable material or anything that would cause a fire hazard or other safety issue or impede access by BPA or contracted line crews to towers and lines.
 - d. The District shall not plant, dig or construct outside of normal operations and maintenance activities without prior coordination with BPA or undertake any use that requires changes in surface elevation that affect current electrical clearances of existing facilities.
 - e. BPA acknowledges that the District utilizes controlled burns as a part of routine operations and maintenance for the District's facilities. The District acknowledges that smoke can conduct electricity and thus presents a safety hazard to workers in the area. Controlled burns may adversely impact the operation of BPA's facilities. Therefore, the District shall not conduct controlled burns within 100-feet of BPA's facilities, including structures and conductors (lines), without prior coordination with BPA.
 - f. BPA shall notify the District at least seven (7) days prior to the beginning of any work outside of routine operations and maintenance or in case of an emergency.
 - g. BPA shall not disturb the District's facilities or the operation and maintenance of such facilities without prior coordination with the District, except in the event of an emergency. Any disturbed areas shall be restored by BPA to a condition as least as good as before the disturbances were made, in consultation with the District.
 - h. While BPA has the right to construct, replace or relocate its facilities within its rights-of-way and within 50-feet of the District's facilities, BPA shall not do so without prior coordination with the District.
- iv. Grant of Easement to District. The Parties acknowledge that the District has determined that an easement provided under the Federal Reclamation Laws, including without limitation by this enumeration, the Act of August 4, 1939 (53 Stat. 1187) as amended by the Act of August 18, 1950 (64 Stat. 463; 43 U.S.C. 387) and the provisions of 43 CFR 429 will accommodate its intended use for those portions of the transferred project facilities associated with the water pumping, conveyance, and distribution system for the Division located

on Project lands retained in Federal ownership; that for those areas, title transfer will involve transferring title for the constructed project facilities to the District while ownership of the underlying and adjacent land will remain with the United States under the administrative jurisdiction of Reclamation. For these portions of the Project Facilities to be Transferred, Reclamation shall execute a Grant of Easement providing a non-exclusive perpetual right for those portions of the constructed irrigation facilities approved for transfer that are located on and across Project lands being retained and managed by Reclamation, as described in Exhibit K;

c. Both parties shall:

- i. Power Contract. Execute a supplemental contract for project use power to the Project facilities, for continued use of Project use power concurrent or directly after this Agreement and prior to legal documents being executed. This contract is a supplement to Contract 14-06-100-2368. The conveyances shall not adversely impact applicable Federal power rates, repayment obligations, or other power uses pursuant to 43 USC § 2904(c).
- ii. Third-Party Authorizations. Within 90-days following the execution of this Agreement, the District shall coordinate with Reclamation for the transfer and delivery of all third-party authorizations and agreements related to the Project Facilities to be Transferred to which the benefits, payments and responsibilities of the United States arising after the date of the quitclaim deed and patent shall inure to the benefit of and be binding upon the District. Reclamation will provide existing electronic records to the District at no charge. The District shall reimburse the United States for all costs of duplication and delivery.
- iii. Record Review. Within 60 days following the execution of this Agreement, Reclamation shall provide the District reasonable access to all non-privileged United States records pertaining to the design, construction, operation, and maintenance of, and specification for the Project Facilities to be Transferred. The District shall notify Reclamation in writing of the specific records it wishes to have copied. Reclamation shall provide one copy each of all identified records within forty-five (45) days of the receipt of said request from the District. Reclamation will provide existing electronic records to the District at no charge. The District shall reimburse the United States for all costs of any requested duplication and delivery.
- iv. Federal Divestiture. Upon the transfer of the identified project facilities, these facilities will no longer be considered part of a Reclamation project, and Reclamation will be entirely divested of all rights, interest and responsibilities related to the project facilities as described in this agreement within the

Division. Such project facilities will no longer be eligible for benefits available only to Reclamation projects and the qualifying entity to which the conveyed property is conveyed will not be eligible to receive any benefits, with respect to the conveyed property, except for project use power and any benefit that would be available to a similarly situated entity with respect to property that is not a part of a Reclamation project. Further, the project facilities, including lands and interests in lands, identified within the Division shall no longer be authorized for federal use and shall no longer be held in federal ownership, control or jurisdiction.

- v. Liability. Effective on the date and time of title transfer, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the transferred facilities other than damages caused by acts of negligence committed by the United States or by agents or employees of the United States, prior to the date of transfer subject to the provisions of the Federal Tort Claims Act (28 USC §§ 2671, *et. seq.*). Nothing in this section increases the liability of the United States beyond that currently provided in the Federal Tort Claims.
- vi. Officials not to Benefit. No Member of or Delegate to the Congress, Resident Commissioner, or official of the District will be admitted to any share or part of the Agreement or to any benefit that may arise out of it other than as a water user in the same manner as other water users.
- vii. Freedom of Information Act. Any information furnished to Reclamation under this Agreement is subject to the Freedom of Information Act (5 U.S.C. § 552).
- viii. Compliance with Laws and Regulations. Following title transfer, the District shall continue to comply will all applicable Federal, State and local laws and regulations.
- ix. Severability. If any one or more provisions contained in the Agreement is, for any reason, held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions of this Agreement. This Agreement is to be construed as if such invalid, illegal, or unenforceable provisions had never been contained in this Agreement, unless the deletion of such provision or provisions would result in such a material change so as to cause the fundamental benefits afforded the Parties by this Agreement to become unavailable or materially altered.
- x. Non-assignability. This Agreement and the rights and obligations hereunder are not assignable without the express written consent of the Parties.

7. COMPLIANCE WITH FEDERAL LAW

The Dingell Act, 43 U.S.C. § 2907, provides that before conveying an eligible facility to a qualifying entity, the Secretary shall comply with applicable federal environmental laws, including the following:

- a. The National Environmental Policy Act of 1969 (42 U.S.C. § 4321, et seq.)(NEPA). The NEPA requirements have been satisfied and the transfer would not have an unmitigated significant effect on the environment. The conveyance qualifies for the use of the categorical exclusion (CE) under 516 Departmental Manual 14.5 F(1). Fed Register 84 FR 24173. The scope of the requested transfer is consistent with the terms of the CE and no extraordinary circumstances exist. The District has verified and affirmed its eligibility as a qualifying non-federal entity, including the CE Qualification Factors. Reclamation sent the District a Letter of Affirmation of Categorical Exclusion Qualification Factors on December 9, 2019. The letter was signed by the District Board Chairman on December 10, 2019, and Board Resolution No. 2019-04 was passed in addition to the affirmation letter. See Exhibit E. The CE, including a justification prepared by Reclamation subject matter experts, was fully reviewed and approved by Reclamation management on April 7, 2020. See Exhibit E.
- b. The Endangered Species Act of 1973 (16 U.S.C. § 1531, et seq.)(ESA). Reclamation conducted a review of the proposed conveyance of the facilities and made the determination that the conveyance action, as proposed, will have No Effect to species listed as threatened or endangered under the ESA. Further, it was determined there would be no adverse modification to Critical Habitat. This determination was based on the premise no ESA-listed species or designated critical habitat are known to occur within, or immediately adjacent to, the facilities designated for transfer. Additionally, as this conveyance action will not have any impacts to Reclamation's operation and maintenance activities in the Snake River basin above Idaho Power Company's Brownlee Reservoir, it was determined this action will have No Effect to ESA-listed species known to occur within the Snake River below the District's point of diversion at Reclamation's Minidoka Dam. The ESA determination is identified in the CE.
- c. The National Historic Preservation Act of 1966 (54 U.S.C. § 300101, et seq.)(NHPA). The NHPA requirements have been satisfied. In accordance with the National Historic Preservation Act of 1996 (NHPA), Reclamation has worked with the District and the Idaho State Historic Preservation Officer (SHPO) to complete consultation of the proposed title transfer. This included field surveys of all buildings and structures, all land parcels proposed for transfer from federal jurisdiction, and a portion of the primary and secondary linear water conveyance facilities. SHPO, the District and Reclamation agreed the proposed project actions will have an adverse effect to historic properties, specifically to the Unit A Pumping Plant (otherwise known as Pumping Plant No 1). Reclamation, the District and the SHPO entered into a MOA for the mitigation of the adverse effect defined in the report and letter of concurrence. R20MA11716 MOA Concerning Adverse Effects to the Unit A

Pumping Plant No. 1 Resulting from the Proposed Title Transfer was executed on April 6, 2020. As defined in II. A. of the MOA, to resolve the adverse effect a sum of \$5,000 will be paid to the SHPO for use in the development of a historic context for irrigation in Idaho. Funds were transmitted to SHPO fully on April 24, 2020. The conditions were fully accepted by SHPO on May 12, 2020. Consultation with the SB Tribes, Minidoka and Jerome counties Historical Societies, and the public occurred throughout.

- d. The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.)(CERCLA). The CERCLA requirements have been satisfied. Reclamation completed an Environmental Compliance Audit Report in December 2019 for the irrigation facilities and a Low-Intensity Real Property Questionnaire Checklist on January 15, 2020 for each of the 17 parcels of land requested for transfer (Appendix J). The environmental transaction screenings included site visits on November 18-19, 2019 and a search of the of Reclamation and the District files. The screenings and completion of the report and checklists were performed in conformance with the scope and limitations of ASTM Practice E1528-14 and RM D&S LND 08-02 and other applicable Reclamation standards. As a result, there was no evidence of recognized environmental conditions in connection with the Project Facilities to be Transferred, as well as a professional opinion that the risk of contamination was low. On December 10, 2019, the District passed a Board Resolution No. 2019-03 releasing the United States for liability for any hazardous materials located on the Project Facilities to be Transferred and agreed that if the transfer is completed that the District is the potentially responsible party and will accept the premises and appurtenances as is Exhibit F; therefore, releasing the United States of all current and future liability.

8. CONGRESSIONAL NOTICE OF TRANSFER TITLE

- a. Notice Requirement. Pursuant to the Dingell Act, on application of a qualifying entity, the Secretary may convey to a qualifying entity all right, title, and interest of the United States in and to any eligible facility if: (A) not later than 90 days before the date on which the Secretary makes the conveyance, the Secretary submits to Congress (i) a written notice of the proposed conveyance; and (ii) a description of the reasons for the conveyance; and (B) a joint resolution disapproving the conveyance is not enacted before the date on which the Secretary makes the conveyance. 43 U.S.C. § 2904.
- b. Notice to Congress. Reclamation has submitted to Congress the written notice, attached hereto as Exhibit M, of this proposed transfer of title to the District which includes a description of the reasons for such transfer (the Notice to Congress).

9. NOTICES

- a. Principal Contacts. The principal contacts for any notice or request authorized or required by this Agreement will be:

| | |
|-----------------------------|-----------------------------|
| Assistant Area Manager | Manager |
| Upper Snake Field Office | A&B Irrigation District |
| Bureau of Reclamation | 414 11 th Street |
| 470 22 nd Street | Rupert, ID 83350 |
| Heyburn, ID 83336 | 208-436-3152 |
| 208-678-0461 | |

- b. Notices in Writing. All notices given under this Agreement shall be in writing and may be delivered by personal delivery, electronic mail (e-mail); via recognized delivery services such as United Parcel Service (UPS) or Federal Express (FedEx); or by deposit in the United States Postal Service (USPS).
- c. Change of Principal Contact. The designation of the principal contact addressee or the address may be changed by notice given to the other party as previously described in the same manner as provided in this Article for other notices.

10. SIGNATURES

IN WITNESS THEREOF, the authorized signatures for the United States and the District below signify their acceptance of the terms of this Agreement.

United States of America
Bureau of Reclamation
[Commissioner or person with delegated authority]

Date

A&B Irrigation District
Harold Mohlman, President, Board of Directors

Date