

**APPENDIX A**

**FINAL DRAFT CONTRACT**

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3  
4 UNITED STATES OF AMERICA  
5 DEPARTMENT OF THE INTERIOR  
6 BUREAU OF RECLAMATION  
7

8 PINE RIVER PROJECT, COLORADO  
9

10 CONTRACT BETWEEN THE UNITED STATES AND THE PINE RIVER  
11 IRRIGATION DISTRICT FOR THE USE OF PROJECT WATER  
12 FOR MISCELLANEOUS AND OTHER USES  
13

14 This Contract, made this \_\_\_\_ day of \_\_\_\_\_, 2007, between the United States of  
15 America, hereinafter called "the United States", and the Pine River Irrigation District, hereinafter  
16 called "the District," pursuant to the Act of June 17, 1902 (32 Stat. 388) and all acts amendatory  
17 thereof or supplementary thereto, particularly the Act of February 25, 1920 (41 Stat. 451),  
18 collectively known as the Federal Reclamation laws.

19 WITNESSETH:

20 WHEREAS, pursuant to Section 4 of the Act of June 25, 1910 (36 Stat. 835), and Subsection  
21 B, Section 4 of the Fact Finders Act of December 5, 1924 (43 Stat. 701), and as authorized by the  
22 President on June 17, 1937, the United States constructed the Pine River Project.

23 WHEREAS, the United States and the District entered into Amendatory Contract No.Ilr-  
24 1204, dated November 30, 1953, for the construction, operation, and maintenance of the Pine River  
25 Project, for the delivery of Project Water, and the repayment of irrigation costs associated with the  
26 Project.

27 WHEREAS, the District has no current construction repayment obligation to the United  
28 States, having repaid its entire irrigation construction obligation to the United States.

29 WHEREAS, the District operates Vallecito Dam and Reservoir in accordance with the terms  
30 of contracts with the United States and the aforementioned Federal Reclamation Laws, and the  
31 District currently supplies Project Water to the Pine River Service Area for irrigation use and other  
32 uses incidental to irrigation.

33 WHEREAS, the Act of February 25, 1920, authorizes the Secretary to enter into contracts to  
34 supply water from any project irrigation system for uses other than irrigation, upon such conditions  
35 of delivery, use, and payment as the Secretary may deem proper; Provided, That the approval of

1 such contract by the water users' association or associations (the District) shall have been first  
2 obtained; Provided, That no such contract shall be entered into except upon a showing that there is  
3 no other practicable source of water supply for the purpose; Provided further, That no water shall be  
4 furnished for the uses aforesaid if the delivery of such water shall be detrimental to the water service  
5 for such irrigation project or to the rights of any prior appropriator; Provided further, That the  
6 moneys derived from such contracts shall be covered into the Reclamation Fund and be placed to the  
7 credit of the project from which such water is supplied.

8 WHEREAS, pursuant to Case No. 03CV300 dated June 28, 2004 in District Court, LaPlata  
9 County, Colorado, Division 4, the District has the authority to lease water for the purposes of this  
10 Contract.

11 WHEREAS, there is a need for the additional long term provision of Project Water for uses  
12 other than irrigation within and outside the service area.

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

15  
16 DEFINITIONS

17 1. (a) "District" means the Pine River Irrigation District, a public corporation, organized  
18 under the laws of the State of Colorado.

19 (b) "Project" means the Pine River Project in Colorado, exclusive of the Pine River  
20 Indian Irrigation Project (PRIIP).

21 (c) "Project Water" means all water appropriated or otherwise acquired by the District as  
22 further defined in Amendatory Contract No.Ilr-1204 dated November 30, 1953, including water  
23 rights acquired by the United States and transferred to the District pursuant to Contract No.14-06-  
24 400-6106 dated July 17, 1974, for the benefit of the Project, but not the 1/6 of the water in Vallecito  
25 Reservoir held in trust by the Bureau of Indian Affairs (BIA), primarily for the Southern Ute Indian  
26 Tribe (Tribe) under PRIIP.

27 (d) "Project Works" means all works or facilities constructed for the Project by  
28 Reclamation, together with any rights-of-way.

29 (e) "Reclamation Law" means the Act of June 17, 1902 (32 Stat. 388), and all acts  
30 amendatory thereof or supplementary thereto, including particularly the Act of February 25, 1920  
31 (41 Stat. 451) (1920 Act).

1 (f) "Secretary or Contracting Officer" means the Secretary of the United States  
2 Department of the Interior or the Secretary's duly authorized representative.

3 (g) "United States" means the United States of America acting by and through the Bureau  
4 of Reclamation, hereinafter called "Reclamation".

5 (h) "Leased Water" means water that is actually contracted to Third-Party Contractors,  
6 not including Standby Water, or is contracted under the "Minor Uses" Block for District and Federal  
7 charges. Leased Water may supply municipal, industrial, and miscellaneous uses.

8 (i) "Standby Water" means water reserved under the Minor Uses or Third Party Contract  
9 provisions for future use which is not charged the Total Water Rate and is not delivered during the  
10 water year. The contractor may request the use of all or a portion of Standby Water by a certain date  
11 as determined by the District each water year, at which time the water will become Leased Water  
12 from that year on. Standby water not requested by that date is then returned to the storage pool for  
13 general project use in that water year.

14 (j) "Total Water Rate" means the total water rate the District charges for use of Leased  
15 Water which includes all District and Federal charges.

16 (k) "Third-Party Contract" means a contract between the District and a Third Party  
17 Contractor, pursuant to this Contract and subject to the approval of the United States, for the delivery  
18 of Leased Water.

19 (l) "Third-Party Contractor" means any entity and/or persons entering into a Third-Party  
20 Contract with the District and the United States for greater than 20 acre-feet (AF) of water or, at the  
21 discretion of the District, for a lesser amount of water outside the service area.

22 (m) "Minor Uses" means those existing and future uses within the Service Area whose  
23 individual Leased Water allocations are equal to or less than 20 AF and not contracted for under a  
24 Third Party Contract. Minor Uses will receive Leased Water in this Contract under the Minor Uses  
25 Block.

26 (n) "Water Year" means the year commencing on November 1 of each year and running  
27 through the following October 31.

28 (o) "Service Area" means the area to be served by the initial portion of the Leased Water  
29 and includes the entire Pine River Basin, the lower Piedra River Basin, and portions of the Florida  
30 River Basin east of the Florida River.

1 CONTRACTING AUTHORITY

2 2. This Contract, executed under the authority of the Act of June 17, 1902 (32 Stat. 388), and  
3 all acts amendatory thereof or supplementary thereto, particularly the Act of February 25, 1920 (41  
4 Stat. 451), is supplementary to existing contracts between the United States and the District. This  
5 Contract establishes the terms and conditions for the use of Pine River Project Water provided for  
6 uses other than irrigation. All Project Water hereafter provided for miscellaneous uses and uses  
7 other than irrigation under the terms of this Contract shall be subject to the conditions set forth  
8 herein.

9  
10 CONTRACT TERMS

11 3. (a) This Contract shall be effective upon execution by the parties hereto and,  
12 following payment of the obligations described herein, all other contract terms will remain in full  
13 force and effect until mutually agreed upon by the District and the United States.

14 (b) The terms and conditions of this Contract may be revised by Contract Amendment or  
15 the Contract terminated at any time if the District and United States mutually agree in writing.

16  
17 WATER RIGHTS AND USE

18 4. (a) The water rights are appropriated for the Project and are in the name of the District,  
19 including the transferred rights of the United States and the water rights held in trust by the United  
20 States for the Tribe. The District has the right to use and distribute Project Water pursuant to  
21 Federal law and contract, and other State law and policies, rules, and regulations. This Contract  
22 shall not create, enlarge, or diminish any water right of the District, the United States, or any third  
23 party. Further, no third party may claim a water right based on any legal theory arising under State  
24 or Federal law, before any State or Federal judicial or administrative body based on the use of  
25 Project Water under this Contract.

26 (b) The use of any Leased or Standby Water under this Contract shall not be detrimental  
27 to the water rights held in trust by the United States for the Southern Ute Indian Tribe.  
28 Furthermore, the use of any Leased or Standby Water under this Contract shall in no way limit  
29 the Tribe's right to fully use its allocation of stored water in Vallecito Reservoir.

1                    USE AND DELIVERY OF PROJECT WATER FOR MISCELLANEOUS USES

2                    5. (a) Pursuant to this Contract and the provisions of the 1920 Act, the District is hereby  
3 authorized to use Project Water for municipal, industrial, and miscellaneous uses, under the two  
4 categories described herein.

5                    (1) Minor Uses Block - A maximum of 2,000 AF annually of Project Water shall  
6 be available to the District for minor exchanges of 20 AF or less annually per exchange  
7 for municipal, industrial, and miscellaneous uses within the Service Area. Leases of  
8 Project Water, or water placed under Standby, by the District under this block can only  
9 be accomplished through the use of a “Water Exchange Agreement for 0.68 AF Users”,  
10 attached to this Contract as **Attachment A** or a “Water Exchange Agreement for Minor  
11 Uses from 0.69 AF to 20 AF” attached to this Contract as **Attachment B**. If all water in  
12 this Block is fully utilized, the District may pursue additional water for municipal,  
13 industrial, and miscellaneous uses pursuant to the conditions of this Contract, if it  
14 satisfies the 1920 Act conditions and obtains additional National Environmental Policy  
15 Act of 1969 (NEPA) compliance.

16                    (2) Third-Party Contracts - A maximum of 4,700 AF annually of Project Water  
17 shall be made available to the District either to be leased to, or placed on standby status  
18 for, municipal, industrial, and miscellaneous users through Third-Party Contracts that  
19 will require approval by the United States pursuant to Article 7. The District agrees to  
20 require Third-Party Contracts for any users of Project Water who are requesting amounts  
21 greater than 20 AF annually or, at the District’s discretion, they can also require Third-  
22 Party Contracts for a lesser amount outside the Service Area. The total initial amount of  
23 approximately 150 AF shall be made available for the Town of Bayfield and the Forest  
24 Lakes Metro District through Third Party Contracts with those entities. This 150 AF plus  
25 an additional 850 AF for future Third Party Contracts equals 1,000 AF of initial Third  
26 Party Contract water. If the full 4,700 AF of water herein is fully utilized, the District  
27 may pursue additional water for municipal, industrial, and miscellaneous uses pursuant to  
28 the conditions of this Contract, if it satisfies the 1920 Act conditions and obtains  
29 additional NEPA compliance.

30                    (b) NEPA Compliance - Prior to execution of this Contract, compliance with NEPA will be  
31 completed for the following:

1 (1) The 2,000 AF of Minor Uses water provided for in subarticle 5(a)(1). This  
2 includes the water under this block that is currently being delivered (approximately 400 AF)  
3 as well as the remaining 1,600 AF that may be delivered in the future, to the extent that the  
4 impacts associated with those future deliveries are consistent with the existing deliveries.  
5 This initial block of 2,000 AF of Minor Uses will be used only within the Service Area. If  
6 future delivery of this water does not occur as anticipated in the initial NEPA document,  
7 additional environmental analysis will be necessary prior to delivery of this water.

8 (2) The initial 1,000 AF of Third-Party Contract water as described in subarticle  
9 5(a)(2). This initial block of 1,000 AF of Third-Party Contract water will be used only  
10 within the Service Area.

11 (3) Any additional future use of Project Water for municipal, industrial, or  
12 miscellaneous uses not addressed by the said NEPA documentation, including any Minor  
13 Uses water for greater than the 2,000 AF described in subarticle 5(a)(1) and any Third-Party  
14 Contracts for greater than the initial 1,000 AF described in subarticle 5(a)(2), will require  
15 additional NEPA compliance. The District will not take any actions through this Contract  
16 which are not in conformance with the NEPA documents for this Contract without additional  
17 NEPA compliance.

18 (c) 1920 Act Compliance - In order to comply with the 1920 Act, the following  
19 conditions must be satisfied prior to the use of Leased Water and prior to the placement of water  
20 under standby status: (1) The water users association, which the United States has determined is  
21 the District, is required to approve this Contract. This condition will be satisfied by a resolution  
22 from the District; (2) No such contract shall be entered into except upon a showing that there is  
23 no other practicable source of water supply for the purpose. This condition will be satisfied by a  
24 written report by a professional engineer; and (3) that no water shall be furnished for the uses  
25 aforesaid if the delivery of such water shall be detrimental to the water service for such irrigation  
26 project or to the rights of any prior appropriator. This condition will be satisfied by a written  
27 report by a professional engineer specifying how use of this water will not impact irrigation.

28 The initial 1920 Act compliance for this Contract covers the 2,000 AF of water for Minor  
29 Uses as provided in subarticle 5(a)(1), and 1,000 AF of Third-Party Contract water as described  
30 in subarticle 5(a)(2). Additional 1920 Act compliance will be required for any water for Minor  
31 Uses greater than the 2,000 AF described in subarticle 5(a)(1), any Third Party Contracts greater

1 than the initial 1,000 AF of water under subarticle 5(a)(2), or for any additional future use of  
2 Project Water for municipal, industrial, or miscellaneous uses not addressed by the initial 1920  
3 Act compliance for this Contract.

4  
5 TERMS OF PAYMENT FOR THE USE OF PROJECT WATER  
6 FOR MISCELLANEOUS USES

7 6. (a) The District shall have the right to charge users for any Project Water made  
8 available under Articles 5(a)(1) and 5(a)(2). However, nothing in this Contract is intended to  
9 require the District to charge a uniform rate to water users. The District's charges for Leased  
10 Water shall consist of, but are not limited to, the following components:

- 11 (1) Annual operation and maintenance costs;  
12 (2) Annual costs associated with the administration of this Contract; and  
13 (3) Annualized system improvements costs, replacement costs, and water  
14 conservation activity costs, all associated with the Project Works.

15 (b) The District charges for Standby Water shall be based on the amount of Standby  
16 Water that shall be designated in a contract for Minor Uses or Third Party Contract water. The  
17 District shall charge for Standby Water each year for each acre-foot designated in the Minor  
18 Uses or Third Party Contract. The charge for Standby Water shall be determined by resolution  
19 of the District Board of Directors. If the charge for Standby Water is not paid in a timely  
20 manner, the water user shall forfeit the rights to the Standby Water.

21 (c) Federal charges, which are calculated in addition to the District rate, shall in no event  
22 reduce the District's rate. The District agrees to pay the United States fees for Project Water  
23 made available under this Contract consisting of the following components:

- 24 (1) An annual charge based on 15 percent of the District's charges to the total  
25 amount of Project Water leased, or placed on Standby, under the Minor Uses Block,  
26 pursuant to Article 5(a)(1), in any given water year. Federal charges for leases under the  
27 Minor Uses Block will be based upon four sub-blocks comprising approximately 500 AF  
28 each. Each Minor Uses Sub-Block will have its own 40-year period of Federal charges.  
29 Minor Uses Sub-Block No. 1 will provide up to a maximum of 407 AF and Federal  
30 charges for the water leased under this sub-block will start with water year 2008 in  
31 November 2007 and end with water year 2047. Annual Federal charges will be based on



1 the amount of water leased in that particular year (current use is about 407 AF). When  
2 any yearly demand by the District for water under the Minor Uses Block exceeds 407 AF,  
3 then Minor Uses Sub-Block No. 2 will be issued by the Contracting Officer in  
4 accordance with Article 14 and the 40-year Federal charge period will begin on that year  
5 of issue. As in Sub-Block No. 1, annual Federal charges on Sub-Block No. 2 will be  
6 based on the amount of water leased in that particular year (from 0 to 600 AF). For  
7 example, if in water year 2010 the District requires 408 AF from the Minor Uses Block,  
8 then Sub-Block No. 2 is issued and Federal charges on that sub-block will be assessed  
9 from water year 2010 through 2049, and the Federal charges in 2010 will be based on  
10 407 AF for Sub-Block No. 1 and 1 AF for Sub-Block No. 2. Similarly, when any yearly  
11 demand by the District for water under the Minor Uses Block exceeds 1,000 AF, then  
12 Minor Uses Sub-Block No. 3 will be issued and the 40-year Federal charge period on  
13 Sub-Block No. 3 will begin on that year of issue, with Federal charges based on the  
14 amount of water leased in that particular year (from 0 to 500 AF). And similarly, when  
15 any yearly demand by the District for water under the Minor Uses Block exceeds 1,500  
16 AF, then Minor Uses Sub-Block No. 4 will be issued and the 40-year Federal charge  
17 period on Sub-Block No. 4 will begin on that year of issue, with Federal charges based on  
18 the amount of water leased in that particular year (from 0 to 500 AF).

19 (2) An annual charge based on 15 percent of the District's charges to all  
20 approved Third-Party Contracts in effect for Leased Water and Standby Water, pursuant  
21 to Article 5(a)(2). This charge will be assessed for each Third-Party Contract for 40  
22 years from the year that contract was executed.

23 (d) Billing by the United States will be based on the Annual Report provided by the  
24 District. The District will provide to the United States, by December 31 following the water year  
25 of use, the Annual Report which is comprised of a list accounting for the amounts of Project  
26 Water under the Minor Uses Block and Third Party Contracts leased or on standby to users under  
27 Articles 5(a)(1) and 5(a)(2). Based on this report, the United States will bill the District by  
28 January 31 of the water year following the water year of use, and the District agrees to pay the  
29 United States within 30 days of receipt of said bill. Any delinquent Third-Party Contactors shall  
30 not receive water until all charges are paid in full. If the actual amount of water leased or on  
31 standby is different from that reported in the Annual Report, any adjustments will be made on

1 the next annual billing.

2 (e) All revenues resulting from the Federal charges pursuant to this Contract are subject  
3 to the provisions of the 1920 Act and shall be deposited into the Reclamation Fund and be placed  
4 to the credit of the Project.

5  
6 THIRD-PARTY CONTRACTS

7 7. Contracts which provide Project Water to any third-party for municipal, industrial, and  
8 miscellaneous uses for amounts greater than 20 acre-feet annually or, at the District's discretion,  
9 a lesser amount outside the service area, shall not be considered subcontracts for purposes of  
10 Article 22 of this Contract. These Third-Party Contracts shall:

11 (a) Be subject to written approval of the Secretary, which approval shall not be withheld  
12 if the terms of such contract are consistent with the terms hereof and with Federal Law, State  
13 Law, regulation, or policy.

14 (b) Only be executed with providers and users of Leased Water and/or Standby Water.

15 (c) As a minimum, contain the following provisions:

16 (1) All Third-Party Contractors are subject to this Contract and all Federal Laws,  
17 State Laws, and regulations applicable to Project Water, particularly the 1920 Act.

18 (2) If there are any conflicts between this Contract and any Third-Party Contract,  
19 this Contract shall govern.

20 (3) Nothing in the Third-Party Contract is intended to create a water right to  
21 Project Water obtained pursuant to this Contract, and the Third-Party Contractor may not  
22 claim a water right based on any legal theory arising under State or Federal law, before  
23 any State or Federal judicial or administrative body based on the use of Project Water  
24 under this or any Third-Party Contract.

25 (4) The United States shall be a party to the contract with privity of contract  
26 between the United States and the Third Party allowing the United States to enforce any  
27 provision of the contract, Federal law, or Federal regulations against the third party  
28 directly.

29 (5) Third-Party Contractors are required to establish and maintain records  
30 acceptable to the Secretary pertaining to the Third-Party Contractor's receipt and use of  
31 Project Water, and other matters as the Secretary may reasonably require. Records shall

1 be furnished to the Secretary in such form and on such date or dates as the Secretary may  
2 reasonably require.

3 (6) Third-Party Contractors are required to acknowledge that their right to use  
4 Leased Water, or have water on standby, is based strictly on their contract.

5 (7) The quality of Project Water is not warranted by the United States or the  
6 District.

7 (8) Third Parties must pay the Total Water Rate by the specified due date which  
8 includes the Federal revenue charge for water supplied under this Contract.

9 (9) In the event of default by a Third Party Contractor, the District has the option  
10 to continue payments to the United States on that amount of water by the time periods set  
11 forth in Article 6(d) or return the water to storage with no further obligation.

12 (d) The District, or the Third-Party Contractor, are responsible for all expenditures that  
13 are necessary to complete NEPA and other environmental law compliance for any future Third-  
14 Party Contracts not covered herein in Article 5(b)(2), and by providing this funding, will have  
15 the right to choose who they will contract for the work. However, the United States must  
16 approve all environmental compliance documentation prior to the execution of any future Third-  
17 Party Contract. Such environmental documentation may be prepared by or for another federal  
18 agency.

19  
20 MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION

21 8. (a) The water to be provided herein will be delivered at the outlet works of Vallecito  
22 Dam or from the Reservoir. All users of Leased Water will be required to provide a measuring  
23 device, which is acceptable to the Contracting Officer, at or near the Contractor's point or points  
24 of diversion to measure the quantity of water diverted under this Contract. All users of Leased  
25 Water shall bear all post-delivery water losses, including but not limited to consumptive losses,  
26 conveyance losses, and channel losses.

27 (b) The District shall prepare and furnish such reports on water use and related data as  
28 required by the Contracting Officer.

1                    UNITED STATES NOT LIABLE FOR WATER SHORTAGES - ADJUSTMENTS

2                    9. There may occur at times during any year a shortage in the quantity of water available  
3 to the District through and by means of the Project, but in no event shall any liability accrue  
4 against the United States or any of its officers, agents, or employees for any damage, direct or  
5 indirect, arising from a shortage on account of drought, errors in operation, or any other causes.  
6 In any year in which there may occur a shortage from any cause, the United States reserves the  
7 right to apportion the available water supply, pursuant to the District's existing Repayment  
8 Contract with Reclamation, Contract No. Ilr-1204, and the Memorandum of Understanding  
9 between Reclamation and the Bureau of Indian Affairs, Contract No. Ilr-1161.

10  
11                    WATER MANAGEMENT

12                    10. As required by Section 210(b) of the Reclamation Reform Act of 1982 (RRA) and  
13 Part 427.1 of the Water Conservation Rules and Regulations effective January 1, 1998, the  
14 District developed and adopted a water management plan in 2001 entitled "Pine River Irrigation  
15 District Water Management Plan, December 17, 2001". The District shall continue to implement  
16 measures contained in their plan, and at subsequent 5-year intervals from the 2001 plan, the  
17 District shall submit a report on the results of the program to the Contracting Officer for review.  
18 Based on the conclusions of the review, the Contracting Officer and District shall consult and  
19 determine whether to continue or update the existing water management program.

20  
21                    **STANDARD ARTICLES**

22  
23                    CHARGES FOR DELINQUENT PAYMENTS

24  
25                    11. (a) The District shall be subject to interest, administrative, and penalty charges on  
26 delinquent payments. If a payment is not received by the due date, the District shall pay an  
27 interest charge on the delinquent payment for each day the payment is delinquent beyond the due  
28 date. If a payment becomes 60 days delinquent, in addition to the interest charge, the District  
29 shall pay an administrative charge to cover additional costs of billing and processing the  
30 delinquent payment. If a payment is delinquent 90 days or more, in addition to the interest and  
31 administrative charges, the District shall pay a penalty charge for each day the payment is  
32 delinquent beyond the due date, based on the remaining balance of the payment due at the rate of  
33 6 percent per year. The District shall also pay any fees incurred for debt collection services  
34 associated with a delinquent payment.

1 (b) The interest charge rate shall be the greater of either the rate prescribed quarterly in  
2 the Federal Register by the Department of the Treasury for application to overdue payments or  
3 the interest rate of 0.5 percent per month. The interest charge rate will be determined as of the  
4 due date and remain fixed for the duration of the delinquent period.

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

8  
9 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

10  
11 12. (a) The obligation of the District to pay the United States as provided in this  
12 Contract is a general obligation of the District notwithstanding the manner in which the  
13 obligation may be distributed among the District's water users and notwithstanding the default of  
14 individual water users in their obligation to the District.

15 (b) The payment of charges becoming due pursuant to this Contract is a condition  
16 precedent to receiving benefits under this Contract. The District shall not deliver water under the  
17 terms and conditions of this Contract for lands or parties that are in arrears in the advance  
18 payment of water rates as levied or established by the District.

19  
20 CONFIRMATION OF CONTRACT

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

27  
28 NOTICES

29  
30 14. Any notice, demand, or request authorized or required by this Contract shall be  
31 deemed to have been given, on behalf of the District, when mailed, postage prepaid, or delivered  
32 to the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State  
33 Street, Room 6107, Salt Lake City, Utah 84138-1102, and on behalf of the United States, when  
34 mailed, postage prepaid, or delivered to the Pine River Irrigation District, 13029 County Road  
35 501, Bayfield, Colorado 81122. The designation of the addressee or the address may be  
36 changed by notice given in the same manner as provided in this article for other notices.

37  
38 CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

39  
40 15. The expenditure or advance of any money or the performance of any obligation of  
41 the United States under this Contract shall be contingent upon appropriation or allotment of  
42 funds. Absence of appropriation or allotment of funds shall not relieve the District from any  
43 obligations under this Contract. No liability shall accrue to the United States in case funds are  
44 not appropriated or allotted.

1  
2 OFFICIALS NOT TO BENEFIT  
3

4 16. No Member of or Delegate to the Congress, Resident Commissioner, or official of  
5 the District shall benefit from this Contract other than as a water user or landowner in the same  
6 manner as other water users or landowners.  
7

8 CHANGES IN DISTRICT'S ORGANIZATION  
9

10 17. While this Contract is in effect, no change may be made in the District's  
11 organization, by any changes which may affect the respective rights, obligations, privileges, and  
12 duties of either the United States or the District under this Contract including, but not limited to,  
13 dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.  
14

15 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED  
16

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

21 BOOKS, RECORDS, AND REPORTS  
22

23 19. The District shall establish and maintain accounts and other books and records  
24 pertaining to administration of the terms and conditions of this Contract, including the District's  
25 financial transactions; water supply data; project operation, maintenance, and replacement logs;  
26 water-use data; and other matters that the Contracting Officer may require. Reports shall be  
27 furnished to the Contracting Officer in such form and on such date or dates as the Contracting  
28 Officer may require. Subject to applicable Federal laws and regulations, each party to this  
29 Contract shall have the right during office hours to examine and make copies of the other party's  
30 books and records relating to matters covered by this Contract.  
31

32 RULES, REGULATIONS, AND DETERMINATIONS  
33

34 20. (a) The parties agree that the delivery of water or the use of Federal facilities  
35 pursuant to this Contract is subject to Federal reclamation law, as amended and supplemented,  
36 and the rules and regulations promulgated by the Secretary of the Interior under Federal  
37 reclamation law.

38 (b) The Contracting Officer shall have the right to make determinations necessary to  
39 administer this Contract that are consistent with the expressed and implied provisions of this  
40 Contract, the laws of the United States and the State, and the rules and regulations promulgated  
41 by the Secretary of the Interior. Such determinations shall be made in consultation with the  
42 District.  
43



1 (5) The District will furnish all information and reports required by Executive  
2 Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the  
3 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and  
4 accounts by the Contracting Agency and the Secretary of Labor for purposes of  
5 investigation to ascertain compliance with such rules, regulations, and orders.

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

14 (7) The District will include the provisions of paragraphs (1) through (7) in every  
15 subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
16 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of  
17 September 24, 1965, so that such provisions will be binding upon each subcontractor or  
18 vendor. The District will take such action with respect to any subcontract or purchase  
19 order as may be directed by the Secretary of Labor as a means of enforcing such  
20 provisions, including sanctions for noncompliance: *Provided, however*, that in the event  
21 the District becomes involved in, or is threatened with, litigation with a subcontractor or  
22 vendor as a result of such direction, the District may request the United States to enter  
23 into such litigation to protect the interests of the United States.

#### 24 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

25  
26  
27 23. (a) The District shall comply with Title VI of the Civil Rights Act of 1964  
28 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the  
29 Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Title II of the Americans with  
30 Disabilities Act of 1990 if the entity is a State or local government entity [Title III if the entity is  
31 a non-government entity], and any other applicable civil rights laws, as well as with their  
32 respective implementing regulations and guidelines imposed by the U.S. Department of the  
33 Interior and/or Bureau of Reclamation.

34 (b) These statutes require that no person in the United States shall be excluded from  
35 participation in, be denied the benefits of, or be otherwise subjected to discrimination under any  
36 program or activity receiving financial assistance from the Bureau of Reclamation on the  
37 grounds of race, color, national origin, disability, or age. By executing this Contract, the District  
38 agrees to immediately take any measures necessary to implement this obligation, including  
39 permitting officials of the United States to inspect premises, programs, and documents.

40 (c) The District makes this agreement in consideration of and for the purpose of  
41 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal  
42 financial assistance extended after the date hereof to the District by the Bureau of Reclamation,  
43 including installment payments after such date on account of arrangements for Federal financial  
44 assistance which were approved before such date. The District recognizes and agrees that such



1 Federal assistance will be extended in reliance on the representations and agreements made in  
2 this article and that the United States reserves the right to seek judicial enforcement thereof.

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

5  
6 MEDIUM FOR TRANSMITTING PAYMENTS  
7

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

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

16  
17 CONTRACT DRAFTING CONSIDERATIONS  
18

19 25. Articles 1 through 25 of this Contract have been drafted, negotiated, and reviewed by  
20 the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains,  
21 and no one party shall be considered to have drafted the stated articles.

22  
23 IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly  
24 executed the day and year first written above.

25  
26  
27 Approved:

UNITED STATES OF AMERICA

28  
29  
30 \_\_\_\_\_  
31 Office of the Regional Solicitor

\_\_\_\_\_   
Regional Director  
Upper Colorado Region  
Bureau of Reclamation

32  
33  
34  
35 ATTEST:

PINE RIVER IRRIGATION DISTRICT

36  
37  
38 \_\_\_\_\_  
39 Secretary

\_\_\_\_\_   
President

ATTACHMENT "A"

WATER EXCHANGE AGREEMENT 0.68 AF USERS

This Water Exchange Agreement is entered between the **PINE RIVER IRRIGATION DISTRICT** whose address is 13029 COUNTY ROAD 501, BAYFIELD, CO 81122 (hereafter the District, \_\_\_\_\_ whose mailing address is \_\_\_\_\_ and property address is \_\_\_\_\_ (hereafter the Water User).

The District is willing to provide exchange water from the Vallecito Reservoir to the Property Owner for out-of-priority diversions of 0.68 acre-feet or less as provided herein. THIS AGREEMENT IS ENTERED BY THE WATER USER TO SATISFY THE REQUIREMENTS OF THE DIVISION OF WATER RESOURCES AND THE CONTRACT BETWEEN THE DISTRICT AND THE UNITED STATES, NO 06-WC-40-710 (CONTRACT), AND IS A SERVICE PROVIDED TO THE WATER USER BY THE DISTRICT AND IS NOT A REQUIREMENT OF THE DISTRICT.

Type of structure: domestic well \_\_\_\_\_ pond \_\_\_\_\_ pump \_\_\_\_\_  
Other (describe) \_\_\_\_\_ surface area of pond \_\_\_\_\_

Permit # \_\_\_\_\_ Decree # \_\_\_\_\_

The property where the water is to be used is located in the \_\_\_\_\_ 1/4 \_\_\_\_\_ 1/4 of  
Section \_\_\_\_\_ Township \_\_\_\_\_ (N/S) Range \_\_\_\_\_ (E/W)  
Subdivision: \_\_\_\_\_  
Lot No. \_\_\_\_\_ Parcel No. \_\_\_\_\_ Tax Account No. \_\_\_\_\_  
Meter Location: \_\_\_\_\_

This Agreement shall commence on the date that the Pine River Irrigation District signs and seals such Agreement. This Agreement shall be renewed from year to year unless terminated in writing by the Water User prior to April 1 of any year, or terminated by the District for failure to pay on a timely basis.

The water to be provided under this Agreement shall not exceed 0.68 acre-feet. The water shall be released from Vallecito Reservoir to the Pine River as directed by the Division of Water Resources. Any water not released by November 1 of any year shall revert to the District and shall not be carried over to the next water year. This water is provided under the provisions for "Minor Uses" as defined in the Contract. The Water User agrees to pay for the total firm water specified at the rate of one hundred seventy dollars (\$170.00) to the District for water release up to .68 acre-feet plus a surcharge of 15% of the total cost of the Water, which the District must pay to the United States. The minimum fee shall be paid regardless of whether any water is actually used from the structure in any water year. On January 1 of the preceding water year the District shall bill Water User the amount due, and the amount due shall be due upon receipt. In the event the amount due is not paid by April 1, then this Agreement may be terminated by the District and the Division of Water Resources shall be notified of the termination. The District may adjust the annual fee, minimum fee, fees required to be assessed by the United States, and acre-feet fee with notice to the Property Owner prior to the beginning of any water year.

The Water User is responsible for obtaining any required permits and other approvals to construct the structure and to divert or to use water from the structure. The Division of Water Resources will require a meter on all wells and a measuring device on other structures. The Water User shall be required to read the meter and report water usage as required by the Division of Water Resources and the District. Failure to provide required meter reading shall result in the imposition of a meter-reading fee. In the event the Division of Water Resources requires the manual reading of meters by the District, then the Water User shall pay an annual meter-reading fee.

The Water User agrees not to hold the District responsible for any loss or damage incurred as a result of the District's inability to perform due to causes outside the control of the District, including, but not limited to, acts of God, natural disasters, drought, major equipment failure or malfunction, or changes in Colorado or Federal law or policy which make the operation of the Agreement impractical or impossible.

The application fee is one hundred fifty dollars (\$150.00) and the transfer fee is fifty dollars (\$50.00).

PINE RIVER IRRIGATION DISTRICT

PROPERTY OWNER(S)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

ATTACHMENT "B"

WATER EXCHANGE AGREEMENT MINOR USERS 0.69 ACRE-FEET TO 20 ACRE-FEET

This Water Exchange Agreement is entered between the **PINE RIVER IRRIGATION DISTRICT** whose address is 13029 COUNTY ROAD 501, BAYFIELD, CO 81122 (hereafter the District), and \_\_\_\_\_ whose mailing address is, \_\_\_\_\_ and property address is \_\_\_\_\_ (hereafter the Water User).

The District is willing to provide exchange water from the Vallecito Reservoir to the Water User for out of priority diversions as provided herein. THIS AGREEMENT IS ENTERED BY THE WATER USER TO SATISFY THE REQUIREMENTS OF THE DIVISION OF WATER RESOURCES, AND THE CONTRACT BETWEEN THE DISTRICT AND THE UNITED STATES, NO. 06-WC-40-710 (CONTRACT), AND IS A SERVICE PROVIDED TO THE WATER USER BY THE DISTRICT AND IS NOT A REQUIREMENT OF THE DISTRICT.

Type of structure: domestic well \_\_\_\_\_ commercial well \_\_\_\_\_ pond \_\_\_\_\_ pump \_\_\_\_\_  
Other (describe) \_\_\_\_\_ surface area of pond \_\_\_\_\_

Permit# \_\_\_\_\_ Decree# \_\_\_\_\_

The property where the water is to be used is located in the \_\_\_\_\_ 1/4 \_\_\_\_\_ 1/4 of  
Section \_\_\_\_\_ Township \_\_\_\_\_ (N/S) Range \_\_\_\_\_ (E/W)  
Subdivision: \_\_\_\_\_  
Lot No. \_\_\_\_\_ Parcel No. \_\_\_\_\_ Tax Account No. \_\_\_\_\_  
Meter Location: \_\_\_\_\_

This Agreement shall commence on the date that the Pine River Irrigation District signs and seals such Agreement. This Agreement shall automatically be renewed from year to year unless terminated in writing by the Water User prior to April 1 of any year, or terminated by the District for failure to pay on a timely basis.

The water to be released under this Agreement shall not exceed \_\_\_\_\_ acre-feet of firm water per year and \_\_\_\_\_ acre-feet standby water per year. The releases shall be made to the Pine River as directed by the Division of Water Resources. Any water not released by November 1 of any year shall revert to the District and shall not be carried over to the next water year.

The Water User agrees to pay for the total firm water specified at the rate of two hundred fifty dollars (\$250.00) per acre-foot per year and forty dollars (\$40.00) per acre-foot for specified standby water per year (as defined in the contract), plus a surcharge of 15% of the total cost of the firm and standby water which the District must pay to the United States. The fee for specified water shall be paid regardless of whether any water is actually used from the structure in any water year. Firm Municipal and Industrial water may be increased but not decreased if available. Standby Municipal and Industrial water may be increased or decreased if available. If it is determined by August 1 of the year the Water User will not use any or part of the Standby Water the District may use the Water for other purposes. On January 1 of the preceding water year, the District shall bill Water User the amount due, and the amount due shall be due upon receipt. In the event the amount due is not paid by April 1, then this Agreement may be terminated by the District and the Division of Water Resources shall be notified of the termination. The District may adjust the annual fee, minimum fee, and acre-feet fee with notice to the Water User prior to the beginning of any water year.

The Water User is responsible for obtaining any required permits and other approvals to construct the structure and to divert or to use water from the structure. The Division of Water Resources will require a meter on all wells and a measuring device on other structures. The Water User shall be required to read the meter and report water usage as required by the Division of Water Resources and the District. Failure to provide required meter reading shall result in the imposition of a meter-reading fee. In the event the Division of Water Resources requires the manual reading of meters by the District, then the Water User shall pay an annual meter-reading fee.

The Water User agrees not to hold the District responsible for any loss or damage incurred as a result of the District's inability to perform due to causes outside the control of the District, including, but not limited to, acts of God, natural disasters, drought, major equipment failure or malfunction, or changes in Colorado or federal law or policy which make the operation of the Agreement impractical or impossible.

The application fee is one hundred fifty dollars (\$150.00) and the transfer fee is fifty dollars (\$50.00).

PINE RIVER IRRIGATION DISTRICT:

WATER USER (S):

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

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

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