

SCHEDULE A

**AGREEMENT AND INSTRUCTIONS FOR ADMINISTERING ESCROW ACCOUNT
BETWEEN THE UNITED STATES DEPARTMENT OF THE INTERIOR AND
THE SAN JUAN WATER COMMISSION**

Animas-La Plata Project, Colorado/New Mexico

THIS AGREEMENT ("Agreement") is entered into on this 1st day of November, 2001, between the UNITED STATES DEPARTMENT OF THE INTERIOR ("Interior") and the SAN JUAN WATER COMMISSION (the "Commission"), a political subdivision of the State of New Mexico.

WHEREAS, Interior and the Commission anticipate entering into an "Amendatory Funding Agreement and Repayment Contract Between the United States and the San Juan Water Commission, New Mexico" ("Contract"); and

WHEREAS, the Contract provides for the establishment of an Escrow Account, upon the occurrence of certain conditions precedent, to be funded by the Commission and drawn upon by the Secretary of the Interior or the Secretary's duly delegated representative (hereinafter "Secretary") to defray a portion of the construction costs of the Project Works of the ANIMAS-LA PLATA PROJECT (the "Project") as described in the Contract; and

WHEREAS, the Commission and Interior are in agreement that the conditions precedent to the establishment of said Escrow Account have been satisfied; and

WHEREAS, the Commission is authorized by NMSA 1978 §§ 11-1-1 through 11-1-7 and by resolution of the County Board of Finance of San Juan County, New Mexico, Resolution No. 01-02-07, to contribute funds to the Project; and

WHEREAS, the Secretary is authorized, through the Bureau of Reclamation by federal reclamation law, by Public Law 99-88, 99 Stat.293, Public Law 106-554, 114 Stat. 2763A, and by 43 U.S.C. §395 to enter into this Agreement and to receive such funds;

THE PARTIES HEREBY AGREE as follows:

1. Within 30 days following the above set forth date of this Agreement, the Commission will establish an Escrow Account with the Treasurer of San Juan County, New Mexico (“Treasurer”), its designated Escrow Agent, and will deposit into said account certain funds totaling \$6,916,722. Said funds represent the Commission’s upfront payment of the capital obligation for the Animas-La Plata Project. This amount is based on the May 2001 Animas-La Plata Project Interim Cost Allocation. Both parties acknowledge that this cost is subject to a final cost allocation as well as procedures provided in Section 302(a)(3)(B) of P.L. 106-554.

2. The Escrow Agent shall hold and disburse funds from the Escrow Account pursuant to the instructions set forth herein.

3. At the option of the Treasurer, pursuant to NMSA 1978 §§ 6-10-8 and 6-10-10, such funds may consist of any one or more of the following:

- (a) cash;
- (b) bonds or other interest-bearing obligations of the United States Government;
- (c) bonds that are a direct obligation of the State of New Mexico; and/or
- (d) bank certificates of deposit, money market accounts, overnight accounts, or other cash-equivalent instruments or investments.

4. The Treasurer shall have the exclusive right to direct investment of the funds of the Escrow Account, subject to the limitations of this paragraph. During each fiscal year, an amount equivalent to not less than three point one eight (3.18) percent of the estimated total construction costs to be incurred during that year for construction of Project Works of the Project shall be maintained negotiable and carry no restrictions on marketability or liquidity. Construction shall be limited to Project Works of the Project and shall have the same connotation as attributed to it by the United States Congress in congressional acts in which funds are appropriated for the Project. For purposes of this Agreement, the fiscal year shall be October 1 through September 30. The Escrow Agent shall credit and pay to the Commission all interest on investments as it is earned.

5. Interior shall have the right to withdraw funds from the Escrow Account in accordance with the terms of this Agreement. No funds shall be withdrawn from the account until the Commission informs the Escrow Agent that each and all of the following prerequisites have been satisfied:

- a. The United States Congress has appropriated funds for construction of the Project;
- b. the Commissioner of Reclamation has authorized the Bureau of Reclamation to commence construction of the Project;
- c. the United States has commenced construction and has forwarded a bill quarterly to the Commission for construction during the previous quarter; and
- d. any and all additional legal prerequisites to commencement of construction have been satisfied.

6. It is the intent of the parties to match advances from the Escrow Account with actual construction costs allocable to the Commission to the extent possible. To accomplish this, Interior shall bill the Commission by the tenth of the first month of each quarter, based on actual recorded construction costs, including agreed-upon sunk costs, through the previous quarter, plus the construction cost estimate for the current quarter. Quarterly billings shall summarize total allocable construction costs to date; advances received through the same period; projections of allocable and all construction costs for the following quarter; and quarterly estimates of allocable and all construction costs for the following three quarters. Quarterly billings will not exceed three point one eight (3.18) percent of the estimated construction cost through the billing period. The Commission will act upon each such bill, and inform the Escrow Agent thereof, within 30 days of receipt, and its approval shall not be unreasonably withheld. Upon receipt of approval by the Commission for the withdrawal, the Escrow Agent shall cause execution of the withdrawal within 10 days of the date it was received by the Escrow Agent. The Escrow Agent will ensure that funds are available for advance based on the 12-month moving estimate.

The Escrow Agent shall allow the withdrawal of funds of up to three point one eight (3.18) percent of the construction costs of the United States during that fiscal year for development of the Project. For purposes of administration of this provision, Interior shall prepare and furnish to the Commission and the Escrow Agent, no later than November 1 of each year, a statement setting forth the total estimated construction costs of the United States during that fiscal year for development of the Project. That annual estimate may be amended at any time by mutual consent of the parties to reflect changing circumstances. Any such amendment shall be furnished to the Escrow Agent in writing.

In addition, the Escrow Agent will disburse to Interior the sum of \$1,202,803.00 for sunk costs in seven annual equal payments of \$171,829.00 each, commencing one year beyond the date of initiation of construction, which sunk costs may be subject to adjustment following the Commission's audit of those costs.

7. Interior shall prepare and furnish to the Commission and to the Escrow Agent annual reports of the actual construction costs for the Project Works of the Project during the previous fiscal year. The reports shall be furnished by January 1 following the conclusion of any fiscal year in which escrow funds were withdrawn by Interior. The reports shall clearly identify the allocation of any and all disbursements from the fund, and shall disclose and allocate all payments made for development of Project Works of the Animas-La Plata Project.

8. The Escrow Agent shall, monthly and at other times as requested by the Commission or Interior, render to the Commission and Interior a statement showing the funds, whether in the form of cash or authorized investments, in the Escrow Account.

9. In the event that funds duly appropriated by Congress for construction of the Project Works of the Project are ordered impounded or their expenditure is enjoined by any federal executive or judicial action, order, decision, directive, or the functional equivalent thereof, the Commission shall have the right to direct the Escrow Agent to cease any and all disbursements from the Escrow Account. In such an event the Commission may, at its discretion, approve disbursements to Interior in any one fiscal year in an amount not to exceed three point one eight (3.18) percent of the construction costs for that fiscal year for Project Works of the Project, to the extent that disbursements from the fund have not previously been made for that work. If the Commission does not, within six months of ordering cessation of disbursements, deliver written notice to the Escrow Agent that disbursements may resume, then

this Agreement shall terminate and the Escrow Agent shall return all escrow funds to the Commission.

10. If construction of the Project Works of the Project should cease for any reason beyond the reasonable control of the parties hereto, the Commission shall have the right to direct the Escrow Agent to cease any and all disbursements from the Escrow Account or, at its discretion, to approve disbursements under the same terms and conditions specified in paragraph 9 herein. If the Commission does not, within six months of ordering cessation of disbursements, deliver written notice to the Escrow Agent that disbursements may resume, then this Agreement shall terminate and the Escrow Agent shall return all escrow funds to the Commission.

11. In the event that any party to the “Colorado Ute Indian Water Rights Final Settlement Agreement” shall exercise its right to void that Final Agreement, as provided in Article VI section C thereof, the Commission shall have the right to terminate this Agreement. This right of the Commission shall be effective immediately upon the provision of notice by the voiding party under the Final Agreement, it being specifically agreed by the parties to this Agreement that this Agreement may be terminated prior to the running of the sixty (60) day notice period provided for voiding the Final Agreement. In such event, the Commission may, in its discretion, elect to direct the Escrow Agent to cease any and all disbursements from the Escrow Account. Such election, if made, shall not diminish or otherwise affect the right of the Commission as provided in this paragraph to terminate this Agreement. Upon notice of such termination by the Commission to the Escrow Agent, the remaining funds in the Escrow Account shall promptly be paid to the Commission.

12. This Agreement shall automatically terminate upon (1) the disbursement of a total of \$6,916,722 in cash, plus any subsequent payments made by the Commission, from the Escrow Account; or (2) the exhaustion of the escrowed funds, whichever occurs first. The Commission and Interior agree that the original term of this Agreement is eight (8) years from the date of this agreement. However, Interior and the Commission may mutually agree to extend the term of this Agreement. Upon termination, the Escrow Agent shall promptly pay all remaining escrowed funds, if any, to the Commission.

13. Except as otherwise provided herein, this Agreement shall remain in effect until the Escrow Agent shall receive notice of termination in writing from Interior. Upon such termination, the Escrow Agent shall promptly pay the remaining escrow funds to the Commission.

14. The records maintained by Interior and the Escrow Agent pursuant to this Agreement shall be open to inspection and audit by representatives of the parties hereto at all times during regular business hours.

15. No member of or Delegate to Congress, Commissioner or official of the Commission shall benefit from this contract other than as a water user in the same manner as other water users.

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

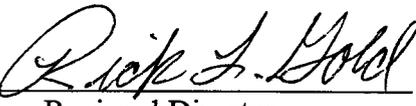
SAN JUAN WATER COMMISSION

By: 
Executive Director

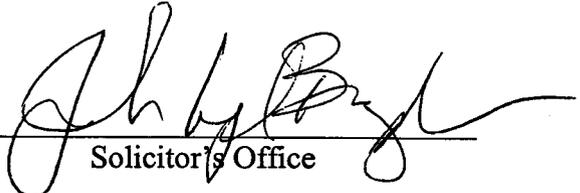
Attest:


Attorney, San Juan County

UNITED STATES DEPARTMENT
OF THE INTERIOR

By: 
Regional Director,
Bureau of Reclamation

Attest:


Solicitor's Office