



United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Regional Office
1150 North Curtis Road, Suite 100
Boise, ID 83706-1234

IN REPLY REFER TO:

PN-3322
WTR-4.00

AUG 11 2011

Mr. Ted Sturdevant, Director
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Subject: Execution of Contract No. 11XX101734 for Municipal and Industrial Water Service Between the United States of America and the State of Washington, Department of Ecology, Columbia Basin Project, Washington

Dear Mr. Sturdevant:

Enclosed for your records is a fully executed original of Contract No. 11XX101734 between the United States of America and the State of Washington (State) Department of Ecology (Ecology).

I wish to express my appreciation for the efforts of staff representing Ecology present at the public negotiation session held in Moses Lake on July 20, 2011. The collective efforts of Mr. Derek Sandison and Mr. Daniel Haller from Ecology, and Ms. Barbara Markham from the State's Office of the Attorney General were essential for the successful negotiation and execution of this contract.

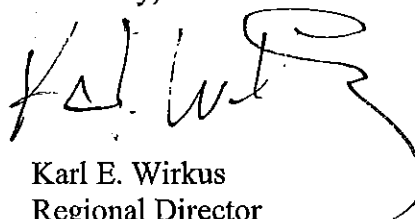
By letter dated July 26, 2011, Ecology provided information supporting its authority to enter into the contract with the United States as well as information documenting the State laws, rules and regulations in place which Ecology believes demonstrates compliance with the General Provisions pertaining to Water Conservation and Equal Employment Opportunity, sub-articles 20(g) and 20(h), respectively.

In advance of contract execution, my office reviewed the supporting information and determined that (1) Ecology has authority to enter into the contract, (2) the water conservation policy and objectives embodied in Chapter 90 of the Revised Code of Washington are consistent with the water conservation planning objectives in Section 210(b) of the Reclamation Reform Act of 1982 and the January 1, 1998, Water Conservation Rules and Regulations, and (3) Ecology's policies with respect to Equal Employment Opportunity are consistent with Federal law and sufficient for the purposes of complying with sub-article 20(h) of the contract.

The Bureau of Reclamation looks forward to continuing collaboration with Ecology as our agencies seek to advance the objectives described in the December 17, 2004, Memorandum of Understanding for the Columbia River Initiative.

If you have any questions about the contract, please contact Ms. Stephanie Utter, Manager, or Ms. Christina Davis-Kernan, Water and Lands Contract Specialist, of our Ephrata Field Office at 509-754-0214 and 509-754-0227, respectively.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karl E. Wirkus', with a large, stylized flourish extending from the end of the signature.

Karl E. Wirkus
Regional Director

Enclosure

cc: Mr. Derek Sandison
Washington State Department of Ecology
Wenatchee Field Office
Office of the Columbia River
303 S. Mission Street, Suite 200
Wenatchee, WA 98801
(w/copy of contract sent via Form B-27)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGIONAL OFFICE

COLUMBIA BASIN PROJECT, WASHINGTON

RECORD OF EXECUTION OF CONTRACT

Contractor: State of Washington Department of Ecology

Contract No: 11XX101734

Date of contract: August 2, 2011

Estimated amount involved: Up-front consideration given for State's \$10 million monetary contribution for Reclamation's expenditure on design and construction of the supplemental feed route to Potholes Reservoir. Annual revenue will vary. Assuming no further lump-sum payment as provided in contract, annual revenue is estimated at up to \$426,800 at the water service rate that will be in effect beginning in 2012.

Purpose: Long-term municipal and industrial water service contract to make available for release to the State of Washington Department of Ecology up to 37,500 acre-feet of project water annually from Franklin D. Roosevelt Lake created by Grand Coulee Dam pursuant to Superseding Certificate of Trust Water Right No. S3-30556.

Remarks: Authority granted to Regional Director to negotiate, execute, and administer the contract by memorandum from the Commissioner dated November 10, 2010.

Place: Boise, Idaho

Date: 08/09/11

1. The form of contract was approved on behalf of the Boise Field Solicitor on July 27, 2011.



Ryan M. Patterson
Program Manager
Repayment and Acreage Limitation

2. Contract executed and transmitted to the following:

ORIGINAL CONTRACT TO: PN-7632 (V.R.)

ORIGINALS TO: Mr. Ted Sturdevant, Director, Washington State Department of Ecology,
P.O. Box 47600, Olympia, WA 98504-7600

Copy to: Mr. Derek Sandison, Washington State Department of Ecology, Wenatchee
Field Office, Office of the Columbia River, 303 S. Mission Street, Suite 200,
Wenatchee, WA 98801
Field Solicitor, Boise, ID
CCA-1000, EPH-2000, PN-1700, PN-1730, PN-1800, PN-1820, PN-3300, PN-6200
84-55000

Assistant Solicitor, Water and Power, Washington DC, Attention: ms6415-MIB

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Columbia Basin Project, Washington

MUNICIPAL AND INDUSTRIAL WATER SERVICE CONTRACT
BETWEEN THE UNITED STATES OF AMERICA
and THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

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

Columbia Basin Project, Washington

**MUNICIPAL AND INDUSTRIAL WATER SERVICE CONTRACT
BETWEEN THE UNITED STATES OF AMERICA AND
THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY**

THIS CONTRACT, made this 2nd day of August, 2011, pursuant generally to the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, particularly, but not limited to, the Act of March 4, 1921 (41 Stat. 1404), the Act of August 30, 1935 (49 Stat. 1028), Section 9(c)(2) of the Act of August 4, 1939 (53 Stat. 1187), the Act of March 10, 1943 (57 Stat. 14) and the Act of August 12, 1958 (72 Stat. 563), collectively known as the Federal Reclamation laws, between the UNITED STATES OF AMERICA, hereinafter referred to as the "United States," acting through the Bureau of Reclamation, hereinafter referred to as "Reclamation," represented by the officer executing this Contract, his duly appointed successor or his duly authorized representative, hereinafter referred to as the "Contracting Officer", and the STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, hereinafter referred to as "Ecology".

WITNESSETH, THAT:

EXPLANATORY RECITALS

2. WHEREAS, the United States, acting through Reclamation, constructed the Columbia Basin Project, Washington, hereinafter called the Project, and has water rights thereon, including those for irrigation, municipal, industrial, and miscellaneous purposes; and

3. WHEREAS, the United States and Ecology entered into a Memorandum of Understanding dated December 17, 2004 (MOU), providing among other things, to work toward the use of a portion of Reclamation's Project water supply for Ecology's Columbia River Water Management Program (Program); and

4. WHEREAS, On December 1, 2008, Ecology issued to the United States a Permit to Appropriate Public Waters of the State of Washington, Permit No. S3-30556 for 37,500 acre feet/ 305 cfs of water for instream flow; and

5. WHEREAS, on August 13, 2009, the United States executed a Temporary Miscellaneous Purposes Water Service Contract, Contract No. 09XX101718 with Ecology for up to 10,000 acre-feet of water, of which 9,662 acre-feet was released by Reclamation for the purpose of meeting the procedural requirement under state law to first perfect the Project water for its intended beneficial use, as stated on Permit No. S3-30556; and

6. WHEREAS, on June 30, 2010, the United States executed a Temporary Miscellaneous Purposes Water Service Contract, Contract No. 10XX101727 with Ecology for up to 10,000 acre-feet for the purpose stated in Recital 5 above; and

7. WHEREAS, on July 16, 2010, the United States executed a Temporary Miscellaneous Purposes Water Service Contract, Contract No. 10XX101729 with Ecology that replaced Contract No. 10XX101727 in its entirety and provided in part for the release of up to 35,000 acre-feet of water pursuant to Permit No. S3-30556 for the purpose stated in Recital 5 above; and

8. WHEREAS, Ecology desires to obtain a water supply from the Project to be left in-stream and used by Ecology to mitigate for impacts to instream flow from new water right permits to be issued by it to Municipal and Industrial water users in accordance with its Program; and

9. WHEREAS, the United States has demonstrated beneficial use of all the Project water in accordance with the provisions of Permit No. S3-30556 and placed this water in Ecology Trust Water Right Program for the long-term use of the water for the purposes provided in this Contract; and

10. WHEREAS, for the purpose of orderly and economical operation and maintenance of the Project the United States recognizes that entering into this Contract with Ecology for the use of this water for the purposes stated in this Contract will benefit the public interest and the interests of the United States to assist in the maintenance of instream flow and will not interfere with other purposes served by the Project, and the United States is agreeable to releasing such water to Ecology pursuant to the provisions of Superseding Certificate of Trust Water Right No. S3-30556 and the terms of this Contract; and

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed as follows:

DEFINITIONS

11. (a) "Municipal and Industrial" as used in this Contract, means municipal, industrial, community domestic, commercial and related purposes of use, but not including agricultural irrigation.

(b) "Permit" means an approval by Ecology relating to the use of water delivered under its Program authorizing the beneficial use of public waters under Chapters 90.03, 90.42, or 90.44 Revised Code of Washington (RCW). The permit, whether in the form of a permit or certificate of state water right, may be associated or consolidated with Ecology's approval for a change to or transfer of an existing right.

(c) "Replacement Water" as used in this Contract means Reclamation's Project water left in-stream pursuant to the provisions of Superseding Certificate of Trust Water Right No. S3-30556 and this Contract and used by Ecology to mitigate, on an acre-foot for acre-foot basis, for impacts to instream flow from new water right Permits issued by Ecology to Municipal and Industrial water users in accordance with its Program.

(d) "Supplemental Water" as used in this Contract means the additional Project water made available to Ecology for instream flow augmentation purposes in at least a 1:2 proportion to releases of Replacement Water.

(e) "Trust Water Right" means water rights assigned to Ecology in accordance with RCW 90.42.

(f) "Third-Party permittees" means water users receiving water under the Program pursuant to a Permit issued by Ecology.

TERM OF CONTRACT

12. This Contract shall remain in effect for a period of forty (40) years from the date of its execution; Provided, that under the terms and conditions mutually agreeable to the parties hereto, renewals may be made for successive periods not to exceed forty (40) years each. The terms and conditions of each renewal shall be agreed upon not later than one (1) year prior to the expiration of the then existing contract.

WATER TO BE MADE AVAILABLE TO ECOLOGY

13. (a) Subject to the conditions, exceptions, and reservations set forth herein and the availability of water in quantities sufficient to fulfill the requirements of this Contract without impairing Project operations, the United States agrees to make available for release to Ecology up to 37,500 acre-feet of Project water annually, pursuant to Superseding Certificate of Trust Water

Right No. S3-30556; Provided, that up to 25,000 acre-feet is made available to Ecology as Replacement Water for Ecology to issue up to 25,000 acre-feet of Municipal and Industrial Permits on an acre-foot for acre-foot basis, with the majority of the water being released at the foot of Grand Coulee Dam on the Columbia River and the small remaining balance to be made available directly from Franklin D. Roosevelt Lake created by the Grand Coulee Dam; Provided further, that up to 12,500 acre-feet of Supplemental Water is made available to Ecology for instream flow augmentation purposes in at least a 1:2 proportion to the Replacement Water releases.

(b) Subject to Ecology's written request for Replacement Water and accompanied by documentation of relevant State issued Permits as identified in (c) of this Article the water provided under this Contract will be available for release. Ecology shall receive said water at the release points described in (a) above, and shall be wholly responsible for the protection of said water for instream flow purposes beyond said point.

(c) Ecology Permits shall not be deemed to be subcontracts or sub-agreements to this Contract, nor shall any third party beneficiary interests be created or implied by virtue of this Contract. Reclamation is not a beneficiary of or party to any sub-contracts, sub-agreements, or Permits between Ecology and water users described herein.

(1) Documentation of Ecology's Permits shall be submitted to Reclamation at the following address: Bureau of Reclamation, Ephrata Field Office, Ephrata Field Office Manager, P.O. Box 815, 32 C Street N.W., Ephrata, Washington 98823.

(2) Permits shall refer to and be subject to the terms and conditions of this Contract.

(d) Upon the release of Project water by Reclamation pursuant to this Contract

Ecology shall suffer all distribution and administration losses from the points of release in (a) above to the places of uses.

(e) Reclamation shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water taken by Ecology hereunder. Ecology and Reclamation will each be responsible and liable only for the negligent acts or omissions of their respective employees or assigns to the extent provided by law. However, nothing in this Contract will be construed to be an admission of fault or liability, and nothing will limit the defenses and immunities legally available to each party against the other.

(f) This Contract and all water taken pursuant thereto shall be subject to and controlled by federal and state law. No liability shall attach to Reclamation for curtailment required by applicable law, and Ecology agrees to a reduction of water taken hereunder in an amount Reclamation determines to be necessary to comply with applicable law.

(g) The Superseding Certificate of Trust Water Right No. S3-30556 issued to Reclamation will maintain its elements, including priority date.

PAYMENTS FOR WATER

14. (a) (1) Prior to execution of this Contract, Ecology has contributed a total amount of \$10 Million to the United States for expenditure on the design and construction of the supplemental feed route to Potholes Reservoir, an authorized feature of the Project, and activities incidental thereto, including the acquisition of lands and rights-of-way. In consideration of this monetary contribution, the United States hereby agrees to accept this contribution in lieu of an annual charge for any and all charges associated with the release to Ecology of up to 14,330 acre-feet of Replacement Water and up to 7,165 acre-feet of Supplemental Water annually over the term of this Contract. The total amount of Replacement Water and Supplemental Water eligible to be

provided annually at no additional cost was determined by the Contracting Officer by comparing the total amount of Ecology's monetary contribution to the equivalent present value of the revenue stream resulting from the calculation found in Exhibit B and hereby made a part a part of this Contract.

(2) For any amount of Replacement Water and corresponding proportion of Supplemental Water in excess of the amounts identified in (a)(1) above to be made available annually for release to Ecology either of the following must be remitted to Reclamation:

- (i) Advance payment of a lump-sum amount as determined by the Contracting Officer for the additional number of acre-feet of Replacement Water using the methodology identified above with then current water rate and interest rate information. Such lump-sum payment shall make Ecology eligible to receive the defined excess amount of Replacement Water and corresponding Supplemental Water at no cost from the time of such lump-sum payment through the remaining term of this Contract,

Or

- (ii) Payment in advance of the annual charge for the additional Replacement Water provided as follows: On or before March 1 of each succeeding year in advance of water release, Ecology shall remit a payment for the total amount of acre-feet of Replacement Water it requests for release in excess of the amount identified in (a)(1) above and any amounts previously paid for pursuant to (a)(2)(i) above. Replacement Water with the corresponding amount of Supplemental Water, may be made available upon payment by Ecology of the annual rate per acre-foot charge as provided in (b) of this Article; Provided, that in no event will the total amount of Replacement Water provided under this Contract exceed 25,000 acre-feet and that in no event will the corresponding amount of Supplemental Water exceed 12,500 acre-feet.

(b) The annual payment set forth in sub-Article 14(a)(2)(ii) of this Contract is based on an initial rate of \$35.00 per acre-foot. From time to time, but not less often than once every 5 years, the rate per acre-foot, the lump-sum payment rate, and the annual payment due the United States under Article 14(a)(2)(ii) of this Contract shall be reviewed by the Contracting Officer and revised if necessary by the United States. Such review shall be in accordance with Federal Reclamation laws and the then current municipal, industrial and miscellaneous purposes rate policy applicable to the Project.

(c) In recognition of the minimal volume of Replacement Water and Supplemental Water when compared to the average volume of water that passes over Grand Coulee Dam annually, the Contracting Officer has determined that no annual operation and maintenance charges shall be assessed for the release of Project water pursuant to this Contract.

(d) Advance payment to the United States is a condition precedent to delivery of water under this Contract.

(e) All payments from Ecology to the United States under this contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States. Except when otherwise specified by the United States, all payments shall be made by check.

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

(g) Payments required hereunder shall be made to the Bureau of Reclamation at the location described in Article 19 of this Contract.

CONTRACT ADMINISTRATION FEES

15. All future contract actions, including new contracts, contract amendments, supplements, and assignments will be charged a fee to be determined prior to any future action that shall be sufficient to cover costs to the United States as determined by the Contracting Officer.

TERMINATION OF CONTRACT

16. (a) This Contract may be terminated at the option of Reclamation at any time (1) if Ecology is delinquent in payments required under this Contract for a period of 90 days, or (2) upon failure of Ecology to comply with other provisions herein, or (3) failure of Ecology to abide by any lawful notice, order, rule, or regulation now or hereafter established affecting water use hereunder, or (4) pursuant to Subarticle 16(b) of this Contract: Provided, that Reclamation notifies Ecology of any delinquency or deficiency by written notice and Ecology fails to comply with said notice within 120 days.

(b) The State of Washington (State) entered into water resources management agreements in support of the State's Lake Roosevelt Incremental Storage Releases Program with the Confederated Tribes of the Colville Reservation, dated December 17, 2007, and with the Spokane Tribe of Indians, dated February 4, 2008, in accordance with the MOU. These agreements, formally recognized in RCW 90.90.060, included provisions for the State to make annual payments to the Tribes for the duration of the Lake Roosevelt Storage Releases Program. Should the State in bad faith fail to provide such payments or other consideration acceptable to the Tribe(s), Reclamation may consider termination of, or non-release of water under, this Contract two years after non-payment occurs, to allow time for the State and the Tribe(s) to resolve issues

related to non-payment. Ecology shall notify Reclamation in writing by July 31 of any year in which non-payment occurs.

(c) Ecology shall have the right to terminate this Contract for any reason:

Provided, that termination under this provision shall become effective no sooner than March 1 of the next calendar year following written notice.

(d) Termination of this Contract for any cause shall not relieve Ecology of any financial obligations incurred by way of this Contract prior to termination.

(e) In the event of termination, all Reclamation releases of Project water provided hereunder shall cease.

DISCLAIMER

17. No provision of this Contract, nor of any renewal hereof, nor the furnishing of water hereunder will be construed to bind the United States after the expiration of this Contract as the basis of a permanent right to Project water. The United States will not be held responsible for any acts or omissions of Ecology's agents. Further, it is the responsibility of Ecology to comply with all applicable laws and regulations of the United States and Ecology regarding any activities involved or associated with the water released hereunder.

CONSTRAINTS ON THE AVAILABILITY OF WATER (WATER SHORTAGES)

18. (a) In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a Condition of Shortage in the quantity of water to be made available to Ecology pursuant to this Contract. In the event the Contracting Officer determines that a Condition of Shortage appears probable, the Contracting Officer will notify Ecology in writing of said determination as soon as practicable.

(b) If there is a Condition of Shortage because of errors in physical operations of the Project, drought, or other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet current and future legal obligations, then no liability shall accrue against the United States or any of its officers, agents, or employees for any damages, direct or indirect, arising therefrom.

NOTICES

19. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of Ecology, when mailed, postage prepaid, or delivered either to the Regional Director, Pacific Northwest Region, Bureau of Reclamation, 1150 N. Curtis Road, Suite 100, Boise, Idaho 83706-1234, or to the Ephrata Field Office Manager, Ephrata Field Office, Bureau of Reclamation, P.O. Box 815, 32 C Street N.W., Ephrata, Washington 98823, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Director, Department of Ecology, P.O. Box 47600, Olympia, Washington 98504-7600, or to the Wenatchee Field Office, Office of the Columbia River, 303 S. Mission Street, Suite 200, Wenatchee, Washington 98801. The designation of the person to be notified or the address of such person may be changed at any time by similar notice.

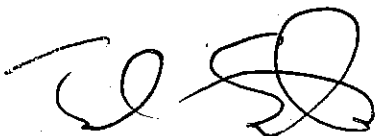
GENERAL PROVISIONS

20. The General Provisions applicable to this Contract are listed below. The full text of these articles is attached as Exhibit A and is hereby made a part of this Contract.

- a. CHARGES FOR DELINQUENT PAYMENTS
- b. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS
- c. GENERAL OBLIGATION -- BENEFITS CONDITIONED UPON PAYMENT
- d. CONFIRMATION OF CONTRACT
- e. CHANGES IN CONTRACTOR'S ORGANIZATION
- f. PROTECTION OF WATER AND AIR QUALITY
- g. WATER CONSERVATION
- h. EQUAL EMPLOYMENT OPPORTUNITY
- i. RULES, REGULATIONS, AND DETERMINATIONS
- j. ASSIGNMENT LIMITED -- SUCCESSORS AND ASSIGNS OBLIGATED
- k. OFFICIALS NOT TO BENEFIT
- l. BOOKS, RECORDS, AND REPORTS
- m. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS
- n. CONTRACT DRAFTING CONSIDERATIONS

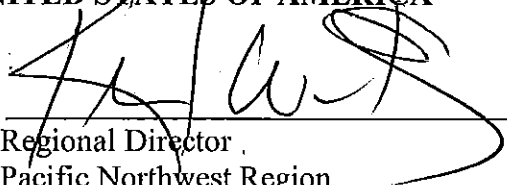
IN WITNESS WHEREOF, the parties hereto have signed their names as of the day and year first above written.

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

By 

Director
Department of Ecology,
State of Washington

UNITED STATES OF AMERICA

By 

Regional Director
Pacific Northwest Region
Bureau of Reclamation
1150 N. Curtis Road, Suite 100
Boise, ID 83706-1234

STATE OF WASHINGTON)

: SS

County of Grant)

On this 2nd day of August, 2011, personally appeared before me, Ted Sturdevant, known to me to be the official of the STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as of the day and year first above written.



Jennifer McConnell
Notary Public in and for the
State of Washington
Residing at: Ephrata
My commission expires: 6/14/15

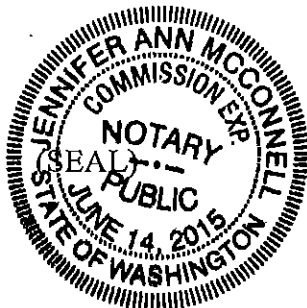
STATE OF WASHINGTON)

: SS

County of Grant)

On this 2nd day of August, 2011, personally appeared before me, Karl Wirkus, known to me to be the official of the United States of America that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as of the day and year first above written.



Jennifer McConnell
Notary Public in and for the
State of Washington
Residing at: Ephrata
My commission expires: 6/14/15

GENERAL PROVISIONS -- COLUMBIA BASIN PROJECT

The Contractor, as referred to in the following Standard Contract Articles, shall be The State of Washington, Department of Ecology.

CHARGES FOR DELINQUENT PAYMENTS

(a) (1) The Contractor shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

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

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

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

GENERAL OBLIGATION -- BENEFITS CONDITIONED UPON PAYMENT

c. (1) The obligation of the Contractor to pay the United States as provided in this contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligation to the Contractor.

(2) The payment of charges becoming due pursuant to this contract is a condition precedent to receiving benefits under this contract. The United States shall not make water available to the Contractor through Columbia Basin project facilities during any period in which the Contractor is in arrears in the advance payment of water rates due the United States.

CONFIRMATION OF CONTRACT

d. The Contractor, after the execution of this contract, shall furnish to the Contracting Officer evidence that pursuant to the laws of the State of Washington, the Contractor is a legally constituted entity and the contract is lawful, valid, and binding on the Contractor. This contract shall not be binding on the United States until such evidence has been provided to the Contracting Officer's satisfaction.

CHANGES IN CONTRACTOR'S ORGANIZATION

e. While this contract is in effect, no change may be made in the Contractor's organization which may affect the respective rights, obligations, privileges, and duties of either the United States or the Contractor under this contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

PROTECTION OF WATER AND AIR QUALITY

f. (1) Project facilities used to make available and deliver water to the Contractor shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: Provided, That the United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

(2) The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Washington and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the release of water by the Contractor; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or the Contractor's facilities.

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

WATER CONSERVATION

g. Prior to release of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this contract, the Contractor shall develop a water conservation plan, as required by Section 210(b) of the Reclamation Reform Act of 1982 (RRA) and Part 427.1 of the Water Conservation Rules and Regulations effective January 1, 1998.

EQUAL EMPLOYMENT OPPORTUNITY

h. During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, disability, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

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

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies

invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

RULES, REGULATIONS, AND DETERMINATIONS

i. (1) The parties agree that the release of water or use of Federal facilities pursuant to this contract is subject to Federal reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

(2) The Contracting Officer shall have the right to make determinations necessary to administer this contract that are consistent with the expressed and implied provisions of this contract, the laws of the United States and the State of Washington, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

OFFICIALS NOT TO BENEFIT

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

BOOKS, RECORDS, AND REPORTS

l. The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including the Contractor's financial transactions; water supply data; water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

m. (1) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 if the entity is a State or local government entity [Title III if the entity is a non-government entity], and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

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

(3) The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after such date on account of

arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the United States reserves the right to seek judicial enforcement thereof.

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

CONTRACT DRAFTING CONSIDERATIONS

n. Articles 1 through 17 of this contract have been drafted, negotiated, and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this contract pertains, and no one party shall be considered to have drafted the stated articles.

EXHIBIT B

The following methodology was used to establish the maximum amount of acre-feet (AF) of Replacement Water and Supplemental Water to be made available annually to Ecology at no additional cost in consideration for its \$10 Million contribution to Reclamation for expenditure on design and construction of the supplemental feed route to Potholes Reservoir and activities incidental thereto as described in sub-article 14(a) of this Contract.

Step 1: In order to evaluate Ecology's contribution on a common basis of comparison with the payment revenue stream expected from a 40-year municipal and industrial (M&I) water service contract from the Columbia Basin Project (Project), the present value of the revenue stream was calculated as follows:

$$PV = \frac{\left(-pmt \times (1+rt) \times \left(\frac{(1+r)^n - 1}{r} \right) \right)}{(1+r)^n} = \$697.98/\text{AF}$$

Where:

pmt = \$35, which is the water service rate (per AF) applicable to this Contract at the time of execution.¹

r = 4.23 %, this is the discount rate of interest: In this case, it is the June 2011 month-end average rate of interest for U.S. government securities with 30-year maturities.

t = 1, reflecting payment due at the beginning of each period.

n = 40, reflecting the 40-year term of Contract and expected payment stream to the U.S.

PV = \$697.98, this represents the value (per AF) in current dollars of a stream of water service contract revenue under the stated parameters.

Step 2: Treating Ecology's contribution as an up-front lump-sum payment to be applied as a credit toward water service under this Contract, the following calculation results in the maximum amount of Replacement Water to be made available annually at no additional annual cost to Ecology:

$$\$10,000,000 \div \$697.98 \text{ per AF} = 14,327.02 \text{ AF (rounded to 14,330 AF) of Replacement Water}^2$$

Step 3: Pursuant to the terms of this Contract, Supplemental Water is to be made available to Ecology at no cost for instream flow augmentation purposes in at least a 1:2 proportion to releases of Replacement Water. Consequently, up to of 7,165 AF of Supplemental Water will be made available to Ecology concomitant with the availability of up to 14,330 AF of Replacement Water.

¹ The \$35 per AF water service rate is the result of deducting the \$4 per AF power charge component from the current M&I water service rate for the Project in effect for 2011 (\$39 per AF), as no Project pumping and reserved power is required for the release of the water supply. The results of a recently completed periodic rate review will be implemented beginning in 2012 and as a result the Project M&I water service rate will increase to \$48 per AF. Accordingly, beginning in 2012 the water service rate applicable to this contract will be \$40 per AF (reflecting the deduction of the then \$8 per AF power component from the revised rate), subject to future periodic revision pursuant to the terms of sub-article 14(b).

² The up to 14,330 AF of Replacement Water to be made available annually at no additional annual cost to Ecology will not change as a result of periodic revision(s) of the water service rate made pursuant to the terms of sub-article 14(b).