

Amendatory Contract No. 6-05-01-00143

12/30/93

JENSEN UNIT
CENTRAL UTAH PROJECT
AMENDATORY REPAYMENT CONTRACT
BETWEEN
UNITED STATES OF AMERICA
AND
UINTAH WATER CONSERVANCY DISTRICT

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
CENTRAL UTAH PROJECT - JENSEN UNIT
COLORADO RIVER STORAGE PROJECT
AMENDATORY REPAYMENT CONTRACT
BETWEEN
UNITED STATES OF AMERICA
AND
UINTAH WATER CONSERVANCY DISTRICT

Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
1.	Definitions	3
2.	Purposes and Objectives	3
3.	Project Works	5
4.	Terms of Payment	6
5.	Establishment of Development Blocks (Deleted)	9
6.	Temporary Sales of Project Water by the United States ..	9
7.	Use and Allotment of Project Water	10
8.	Operation and Maintenance of Transferred Works-- Payment of Miscellaneous Costs	11
9.	Emergency Reserve Fund	14
10.	Examination and Inspection of Project Works for Determining Adequacy of Operation, Maintenance and Safety of Dams Programs	15
11.	Charges for Delinquent Payments	16
12.	Rules, Regulations, and Determinations	16
13.	Confirmation of Contract	17
14.	Equal Opportunity	17
15.	Compliance with Civil Rights Laws and Regulations	18
16.	Water and Air Pollution Control	19
17.	Reservation of Interest Claims	19
18.	Approval of Contract by Congress	19
19.	Severability	20
20.	Administration of Project Lands	20
21.	Water Conservation	20
22.	All Other Provisions to Remain the Same	21
	Signatures	21

JENSEN UNIT
CENTRAL UTAH PROJECT
AMENDATORY REPAYMENT CONTRACT
BETWEEN
UNITED STATES OF AMERICA
AND
UINTAH WATER CONSERVANCY DISTRICT

THIS AMENDATORY CONTRACT is made this ⁹²30th day of December, 1988, in pursuance of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto, between the UNITED STATES OF AMERICA, hereinafter called the United States, acting through the Secretary of the Interior, and the UINTAH WATER CONSERVANCY DISTRICT, a water conservancy district organized and existing pursuant to the laws of the State of Utah, and particularly the Water Conservancy Act, Section 73-9-1 et seq., Utah Code Annotated, 1953, as amended, hereinafter called the Contractor, with its principal place of business and Office at Vernal, Uintah County, Utah.

THE FOLLOWING STATEMENTS ARE MADE IN EXPLANATION:

The Act of Congress approved April 11, 1956 (70 Stat. 105), authorized the construction, operation, and maintenance of the initial phase of the Central Utah Project as a participating project of the Colorado River Storage Project, of which the Jensen Unit is a part, which unit is hereinafter called the Project, and the United States has investigated, planned and has substantially constructed the Project, except Burns Pumping Plant and associated features, for storage, diversion, distribution of water from Big Brush Creek, Little Brush Creek, and the Green River for irrigation, municipal and industrial, recreational, fish and wildlife purposes, flood control and drainage of Project lands.

1 Repayment Contract No. 6-05-01-00143, dated June 3, 1976, between
2 the United States and the Contractor provided for, among other things, the
3 construction of the Project by the United States and the repayment of the
4 construction costs by the Contractor. The Project was initially planned and
5 designed to annually supply 4,600 acre-feet of irrigation water and 18,000
6 acre-feet of municipal and industrial water, of which 12,000 acre-feet of
7 municipal and industrial water would be supplied by the Burns Pumping Plant
8 Exchange.

9
10 Construction of the Project works has been substantially completed
11 except for Burns Pumping Plant. The Project works, as constructed, will
12 develop 4,600 acre-feet of irrigation water annually and 6,000 acre-feet of
13 municipal and industrial water annually. The undeveloped 12,000 acre-feet
14 of municipal and industrial water will require the construction of the Burns
15 Pumping Plant, for which there is no present or foreseeable need. Repayment
16 by the Contractor for 4,600 acre-feet of irrigation water commenced on
17 January 31, 1985, and will continue in accordance with Repayment Contract
18 No. 6-05-01-00143, dated June 3, 1976, as amended November 1, 1985.

19
20 The municipal and industrial water demand of 18,000 acre-feet
21 annually was based on an accelerated population growth anticipated within
22 the Contractor's service area predicated on Project Independence, a 1974
23 Federal initiative to aid the United States in becoming independent of
24 foreign nations in the production of energy, particularly the production of
25 oil and gas, including oil shale development. The Project was planned to
26 accommodate that demand. Project Independence failed to materialize,
27 resulting in the curtailment of energy development and a corresponding
28 decrease in population, rather than the anticipated population growth within
29 the Contractor's service area. The existing demand for municipal and
30 industrial water within the Contractor's service area is less than 2,000
31 acre-feet annually, and it is anticipated that such demand will not exceed

1 6,000 acre-feet annually within the foreseeable future.

2

3 The reduction in the anticipated demand for municipal and
4 industrial water resulting from the outmigration of population and industry
5 from the Contractor's service area has resulted in substantially less
6 revenue available to the Contractor to meet its original municipal and
7 industrial water repayment obligation. Accordingly, it is necessary to
8 modify the Contractor's original municipal and industrial water repayment
9 obligation to conform to the existing and anticipated demands for such water
10 and to the Contractor's ability to pay.

11

12 NOW, THEREFORE, in consideration of the mutual and dependent
13 covenants, Repayment Contract No. 6-05-01-00143, dated June 3, 1976, as
14 amended November 1, 1985, is hereby amended as follows:

15

16 DEFINITIONS

17

18 1. Article 1 of the Repayment Contract is amended to add
19 subarticles (l) and (m) as follows:

20

21 "(l) 'Repayment Contract' means Repayment Contract No. 6-05-
22 01-00143, between the United States and Uintah Water Conservancy District,
23 dated June 3, 1976, as amended November 1, 1985.

24

25 "(m) 'Ashley Valley Water Purification Plant' means the water
26 purification plant constructed by Central Utah Water Conservancy District
27 located at 2500 West 3500 North, Vernal, Utah."

28

29 PURPOSES AND OBJECTIVES

30

31 2. The purposes and objectives of this Amendatory Contract are

1 to amend the Repayment Contract to provide for:

2

3 (a) Repayment by the Contractor for 2,000 acre-feet of
4 Project municipal and industrial water annually through an equitable
5 apportionment of the Project construction costs allocated to municipal and
6 industrial water.

7

8 (b) Reserving to the United States the remaining 4,000 acre-
9 feet of developed Project municipal and industrial water and the 12,000
10 acre-feet of undeveloped Project municipal and industrial water for
11 marketing by the Contracting Officer, providing that:

12

13 (1) The Contracting Officer shall not market such
14 municipal and industrial water within the boundaries of Contractor or in
15 competition with the Contractor.

16

17 (2) The Contractor shall have the right of first
18 refusal to acquire such municipal and industrial water from the Contracting
19 Officer, in whole or in part, at such times and on the same terms and
20 conditions as shall be contained in any bona fide written offer of any third
21 party to purchase such water from the Contracting Officer.

22

23 (c) The right of the Contractor to acquire from the
24 Contracting Officer the remaining unmarketed 4,000 acre-feet of developed
25 Project municipal and industrial water, in whole or in part, in increments
26 of at least 100 acre-feet, provided that the respective repayment periods
27 shall not extend beyond the year 2037.

28

29 (d) Delaying the construction of the Burns Pumping Plant
30 until such times as the demand develops for an additional 12,000 acre-feet
31 of Project municipal and industrial water, in whole or in part. The

1 Contractor shall have the right of first refusal and the right to acquire
2 from the Contracting Officer the additional 12,000 acre-feet of Project
3 municipal and industrial water, in whole or in part, in accordance with
4 Reclamation Law.

5
6 PROJECT WORKS

7
8 3. Article 2 of the Repayment Contract is amended as follows:

9
10 Subarticle 2(b)(1) now reads:

11
12 "(1) Red Fleet Dam and Reservoir means the same as
13 Tyzack Dam and Reservoir as described in Subarticle 2(b)(1) of the Repayment
14 Contract."

15
16 Subarticle 2(b)(2) now reads:

17
18 "(2) Tyzack Pumping Plant, located near the downstream
19 end of the outlet works of Red Fleet Dam with a design capacity of 46 ft³/s.
20 Water will be pumped from Red Fleet Reservoir through the Tyzack Aqueduct
21 Reach 1 to the Ashley Valley Water Purification Plant."

22
23 Subarticle 2(b)(3) now reads:

24
25 "(3) (i) Tyzack Aqueduct Reach 1, comprises a 39, 36,
26 and 33 inch underground pipeline approximately 10.7 miles in length with a
27 capacity of approximately 46 ft³/s, extending from the Tyzack Pumping Plant
28 to the Ashley Valley Water Purification Plant.

29
30 "(ii) Tyzack Aqueduct Reach 2, comprises a 33 inch
31 underground pipeline approximately 2.9 miles in length, extending from the

1 Ashley Valley Water Purification Plant to the Vernal City municipal water
2 system at 1500 North and 1500 West, Vernal, Utah."

3
4 TERMS OF PAYMENT

5
6 4. Article 5 of the Repayment Contract is amended as follows:

7 Subarticle 5(a) now reads:

8 "(a) The Contractor agrees to pay to the United States the
9 Project repayment obligation of 1) \$750,000 for irrigation and 2) the
10 municipal and industrial repayment obligation as outlined in Subarticle 5(c)
11 herein. The municipal and industrial obligation is subject to adjustments
12 depending on additional facilities constructed and on the allocation of
13 construction costs and allotments of the Project water to irrigation and
14 municipal and industrial use which will be made by the Secretary in
15 accordance with Reclamation Law; Provided, the Contractor's repayment
16 obligation as defined above may be adjusted for increases resulting from any
17 or all of the following; 1) cost of additional features varying from those
18 costs estimated at the time of signing this Amendatory Contract and 2)
19 increases in allotments of Project irrigation water to municipal and
20 industrial water, including adjustments pursuant to Subarticle 8(e) herein.
21 The irrigation repayment obligation is payable by the Contractor in
22 accordance with Subarticle 5(b) of the Repayment Contract. The repayment
23 obligation for municipal and industrial water is payable by the Contractor
24 in annual installments due on or before January 31 of each year prior to the
25 water delivery in accordance with Subarticle 5(c) herein."

1 Subarticle 5(c) now reads:

2
3 "(c) (1) The Contractor hereby agrees to pay to the United
4 States the sum of \$5,545,592, which includes interest during construction,
5 as the Contractor's municipal and industrial water repayment obligation for
6 the perpetual right to 2,000 acre-feet of water annually based on the
7 fraction of 2,000/18,000 of the costs expended through December 31, 1987,
8 allocated to Project municipal and industrial water of Red Fleet Dam and
9 Reservoir, Tyzack Pumping Plant, and Tyzack Aqueduct, Reach 1 and 2
10 (\$43,241,592 less \$25,814 prepayment) and the estimated costs of Burns
11 Pumping Plant indexed to January 1, 1988 (\$6,694,546). The Contractor will
12 pay its municipal and industrial water repayment obligation for said 2,000
13 acre-feet in 49 successive equal annual amortized installments of \$226,585
14 each. The first installment will be due on January 31, 1989, and the
15 remaining installments will be due on each succeeding January 31 until the
16 entire balance owing is paid in full.

17
18 "(2) The Contracting Officer may market the remaining
19 4,000 acre-feet of Project municipal and industrial water available in Red
20 Fleet Reservoir subject to Subarticle 2(b)(1) herein. In the event the
21 Contracting Officer receives a bona fide offer to purchase said water
22 acceptable to the Contracting Officer, the Contractor shall have the first
23 right of refusal to acquire such water on the same terms and conditions as
24 shall be contained in any bona fide written offer of any third party to
25 purchase such water from the Contracting Officer. Such right of first
26 refusal shall be exercised by the Contractor within 90 days after written
27 notice by the Contracting Officer to the Contractor of such bona fide offer,
28 which notice shall specify the quantity of water in acre-feet and the terms
29 and conditions thereof. Permanent sales of such water will be considered in
30 minimum quantities of 100 acre-feet.

1 "(3) The Contractor shall have the right to acquire any
2 of the remaining unmarketed 4,000 acre-feet of Project municipal and
3 industrial water in quantities of 100 acre-feet, or more, and the repayment
4 therefore of a proportionate share of the allocated costs specified in
5 Subarticle 5(c)(1) herein and any additional costs expended on Project works
6 since January 1, 1988. The annual cost per acre-foot of such Project
7 municipal and industrial water will be based on an annual payment of \$113.29
8 per acre-foot times 49 years (\$5,551.21), which includes principal and
9 interest, divided by the number of years remaining between the date of
10 acquisition and 2037. In addition, any costs expended after January 1,
11 1988, allocated to Project municipal and industrial water, amortized over
12 the period remaining between the date of acquisition and 2037, divided by
13 16,000, will determine the additional annual cost per acre-foot. Such
14 additional cost shall be added to the annual cost per acre-foot determined
15 above.

16
17 "(4) In the event Burns Pumping Plant is constructed,
18 the Contracting Officer may market any portion of the additional 12,000
19 acre-feet of Project municipal and industrial water developed thereby
20 subject to Subarticle 2(b)(1) herein. The Contractor shall have the first
21 right of refusal to acquire such additional water in the same manner
22 provided for in Subarticle 5(c)(2) herein. Permanent sales of such water
23 will be considered in minimum quantities of 100 acre-feet.

24
25 "(5) The Contractor shall have the right to acquire any
26 unmarketed portion of the above 12,000 acre-feet of Project municipal and
27 industrial water in quantities of 100 acre-feet, or more. Repayment will be
28 based on the annual amount per acre-foot of all costs allocated to Project
29 municipal and industrial water, including a proportionate share of the
30 expended costs set forth in Subarticle 5(c)(1) herein and additional costs
31 set forth in Subarticle 5(c)(3) herein and including the actual costs of

1. Burns Pumping Plant less that portion of the estimated costs thereof being
2 repayed by the Contractor pursuant to Subarticles 5(c)(1), 5(c)(2), and
3 5(c)(3) herein. The terms of repayment for said water will be based on
4 Reclamation Law existing at the time of acquisition.

5

6 "(6) The municipal and industrial repayment obligation
7 under Subarticle 5(c) herein shall accrue interest at the rate established
8 pursuant to provisions of Section 5(f) of the Act of April 11, 1956 (70
9 Stat. 105) as amended by the Act of June 27, 1960 (74 Stat. 255)."

10

11 ESTABLISHMENT OF DEVELOPMENT BLOCKS

12

13 5. Article 6 of the Repayment Contract entitled "Establishment
14 of Development Blocks," is deleted.

15

16 TEMPORARY SALES OF PROJECT WATER BY THE UNITED STATES

17

18 6. Article 7 of the Repayment Contract is amended and now reads:

19

20 "7. (a) During the time when Project municipal and industrial
21 water is available above the quantity under repayment by the Contractor,
22 said water may be sold from year to year by the Contracting Officer to the
23 Contractor for use within the Contractor's boundaries, or to third parties
24 for use outside of the Contractor's boundaries, for municipal and industrial
25 use or for irrigation use, on a case-by-case determination at a rate to be
26 established by the Contracting Officer.

27

28 "(b) Payments for use of such water shall be in advance. The
29 proceeds from third party contracts shall be applied first to

1 the proportionate share of operation and maintenance expense incurred by the
2 Contractor for delivery of said water, and the remaining revenues will be
3 credited to the cost assumed by the United States."

4
5 USE AND ALLOTMENT OF PROJECT WATER

6
7 7. Article 8 of the Repayment Contract is amended as follows:

8
9 Subarticle 8(a) now reads:

10
11 "(a) The Contractor shall have the perpetual right to 4,600
12 acre-feet annually of Project irrigation water and 2,000 acre-feet annually
13 of Project municipal and industrial water. In the event the Contractor
14 acquires additional Project municipal and industrial water on a permanent
15 basis pursuant to this Amendatory Contract, the Contractor shall have a
16 perpetual right to the use of such additional water. The remaining Project
17 municipal and industrial water supply is reserved to the United States. The
18 United States reserves the right to operate Project works and to exercise
19 control thereof for flood control, fish, wildlife, and recreational purposes
20 consistent with operating criteria established by the Contracting Officer.
21 Project water in excess of that necessary to satisfy Project water
22 requirements in any year is to be retained in Red Fleet Reservoir to the
23 extent of the capacity available therefor, for use during succeeding years.
24 There will be no individual holdover rights or privileges in said
25 reservoir."

26
27 Subarticle 8(c) now reads:

28
29 "(c) The Project municipal and industrial water will be
30 delivered by the Contracting Officer to the Contractor in Red Fleet Dam and
31 Reservoir. The Contractor will be entitled to use only that quantity of

1 Project municipal and industrial water which is under repayment obligation
2 by the Contractor as provided for in Subarticle 5(c) herein. The Contractor
3 will allocate such water for use in accordance with contracts approved by
4 the Contracting Officer. All such contracts shall be in a form satisfactory
5 to the Contracting Officer, approved by him in advance, and shall not be
6 amended or otherwise affected without his written consent until after the
7 Contractor's municipal and industrial repayment obligation to the United
8 States has been paid in full."

9
10 Subarticle 8(e) now reads:

11
12 "(e) The Contractor agrees that Project irrigation water
13 shall not be delivered or furnished by the Contractor for any purpose other
14 than agricultural uses, including but not restricted to domestic use
15 incidental to such agricultural purposes, and the watering of livestock,
16 without the written consent of the Contracting Officer. No conversion of
17 Project irrigation water to municipal and industrial use shall be made with
18 out written consent of the Contracting Officer. In the event there is a
19 conversion of Project irrigation water to municipal and industrial use, as
20 approved by the Contracting Officer, then adjustment shall be made
21 accordingly in the irrigation and municipal and industrial allocated costs
22 and repayment obligation. In such event, this Amendatory Contract shall be
23 amended to accommodate a change in repayment schedules and annual charges."

24
25 OPERATION AND MAINTENANCE OF TRANSFERRED
26 WORKS--PAYMENT OF MISCELLANEOUS COSTS

27
28 8. Article 11 of the Repayment Contract is amended and now reads
29 as follows:

30
31 "11. (a) Upon substantial completion of the Project works, or as
32 otherwise determined by the Contracting Officer, and following written

1 notification, the care, operation, and maintenance, exclusive of any
2 recreation or fish and wildlife facilities, of any or all of the project
3 works shall be transferred to the Contractor. Title to such transferred
4 works will remain in the name of the United States.
5

6 "(b) The Contractor, without expense to the United States,
7 shall care for, operate, and maintain such transferred works in full
8 compliance with the terms of this contract, and in such manner that said
9 transferred works remain in good and efficient condition.
10

11
12 "(c) Necessary repairs of the transferred works shall be
13 made promptly by the Contractor. In case of unusual conditions or serious
14 deficiencies in the care, operation, and maintenance of the transferred
15 works threatening or causing interruption of water service, the Contracting
16 Officer may issue to the Contractor a special written notice of the
17 necessary repairs. Within 60 days of receipt of such notice, the Contractor
18 shall either make the necessary repairs or submit a plan acceptable to the
19 Contracting Officer for accomplishing said repairs. If the Contractor fails
20 to do either within 60 days of receipt of said notice, the Contracting
21 Officer may cause the repairs to be made and the cost thereof shall be paid
22 by the Contractor as directed by the Contracting Officer.
23
24

25 "(d) The Contractor shall not make any substantial changes
26 in the Transferred Works without first obtaining written consent of the
27 Contracting Officer. The Contractor shall ensure that no unauthorized
28 encroachment occurs on Project Lands and rights-of-way.
29
30

31 "(e) The Contractor agrees to indemnify the United States
32 for, and hold the United States and all of its representatives harmless
33 from, all damages resulting from suits, actions, or claims of any character
34 brought on account of any injury to any person or property arising out of
35 any act, omission, neglect, or misconduct in the manner or method of
36 performing any construction, care, operation, maintenance, supervision,
37 examination, inspection, or other duties of the Contractor.
38

39 "(f) The Contractor shall cooperate with the Contracting
40 Officer in implementing an effective safety of dam program. The United
41 States agrees to provide the Contractor and the appropriate agency of the
42 State or States in which the project facilities are located with design data,
43 designs, and an operating plan for the dam and related facilities consistent
44 with the current Memorandum of Understanding between the United States and
45 the State of Utah relating to coordination of storage dam plan-design-
46 construct-operate-maintain process.
47

48 "(g) In the event the Contractor is found to be operating
49 the transferred works or any part thereof in violation of this contract,
50 then, upon the election of the Contractor Officer, the United States may
51 take over from the Contractor the care, operation, and maintenance of the
52 transferred works by giving written notice to the Contractor of such
election and the effective date thereof. Thereafter, during the period of

1 operation by the United States, upon notification by the Contracting
2 Officer, the Contractor shall pay to the United States, annually in advance,
3 the cost of operation and maintenance of the works as determined by the
4 Contracting Officer. Following written notification from the Contracting
5 Officer, the care, operation, and maintenance of the works may be
6 retransferred to the Contractor.

7
8 "(h) In addition to all other payments to be made by the
9 Contractor under this contract, the Contractor shall reimburse to the United
10 States, following the receipt of a statement from the Contracting Officer,
11 all miscellaneous costs incurred by the United States for unusual work
12 involved in the administration and supervision of this contract.

13
14 "(i) When the Contractor assumes the care, operation and
15 maintenance of transferred works constructed pursuant to this contract, The
16 Contractor shall be compensated by the United States or by parties with whom
17 the United States Contracts, for the cost of the operation, maintenance, and
18 replacement properly chargeable under standard Reclamation Laws and
19 procedures for flood control, and fish and wildlife. The costs associated
20 with Red Fleet Dam and Reservoir will be determined jointly by the
21 Contracting Officer and the Contractor annually. Compensation will be made
22 in the amount determined each year of the Contractor's operation and payment
23 will be made by June 1 of the following year.

24
25 "(j) In the event the Contracting Officer markets Project
26 municipal and industrial water to third parties pursuant to and in
27 accordance with Subarticles 5(c)(2) and 5(c)(4) of this Amendatory Contract,
28 the Contracting Officer will charge and collect from such third parties a
29 proportionate share of all operation, maintenance, and replacement expenses
30 in advance associated with Project municipal and industrial water sold by
31 the Contracting Officer to third parties. The Contracting Officer will pay
32 to the Contractor, such operation, maintenance, and replacement charges upon
33 receipt thereof from the third parties purchasing said water.

34
35 "(k) Extraordinary costs of operation and maintenance are
36 those costs attributable to significant failure of major Project works or
37 costs attributable to unforeseen operation, maintenance, repairs,
38 replacement or betterment which occur during periods of special stress, such

1 as droughts, earthquakes, storms, landslides, or other emergencies or acts
2 of God. Such costs as are allocated to Project municipal and industrial
3 water will be initially shared at two-thirds by the United States and one-
4 third by the Contractor until such time as the Burns Pumping Plant is
5 constructed. Thereafter, such costs shall be shared between the United
6 States and the Contractor based on the ratio of the quantity of Project
7 municipal and industrial water under repayment by the Contractor, divided by
8 18,000."

9 EMERGENCY RESERVE FUND

10
11 9. Article 14 of the Repayment Contract is amended and now reads
12 as follows:

13 "14. (a) Commencing with execution of this contract, the
14 Contractor shall accumulate and maintain a reserve fund, which the
15 Contractor shall keep available to meet costs incurred during periods of
16 special stress caused by damaging droughts, storms, earthquakes, floods, or
17 other emergencies threatening or causing interruption of water or power
18 service.

19
20 "(b) The Contractor shall accumulate the reserve fund with
21 annual deposits or investments of not less than \$12,000 to a Federally
22 insured interest- or dividend-bearing account, or in securities guaranteed
23 by the Federal Government; Provided, That money in the reserve fund shall be
24 available within a reasonable time to meet expenses for such purposes as
25 those identified in paragraph (d). Such annual deposits to the reserve fund
26 shall continue until the basic amount of \$120,000 is accumulated. Following
27 an emergency expenditure from the fund, the annual deposits shall continue
28 from the year following the emergency expenditure until the previous balance
29 is restored. After the initial amount is accumulated or after the previous
30 balance is restored, the annual deposits may be discontinued.

31
32 "(c) Upon mutual agreement between the Contractor and the
33 Contracting Officer, the basic reserve fund or the accumulated reserve fund
34 may be adjusted to account for risk and uncertainty stemming from the size
35 and complexity of the project, the size of the annual operation and
36 maintenance budget, additions to, deletions from, or changes in Project
37 works, and operation and maintenance costs not contemplated when this
38 contract was executed. If the accumulated fund is adjusted downward, the

1 Contractor shall forward the excess increment of the fund to the United
2 States within 60 days of the date of adjustment. Such excess increment
3 shall be applied, as a tail-end credit, to the Contractor's repayment
4 obligation in addition to all other installments due under this contract,
5 thereby reducing the repayment period.

6
7 "(d) The Contractor may make expenditures from such reserve
8 fund only for meeting usual operation and maintenance costs incurred during
9 periods of special stress as described in paragraph (a), and unforeseen
10 extraordinary operation and maintenance costs, unusual or extraordinary
11 repair or replacement costs, and betterment costs (in situations where
12 recurrence of severe problems can be eliminated) during such periods of
13 special stress. Proposed expenditures from the fund shall be submitted to
14 the Contracting Officer in writing for review and written approval prior to
15 disbursement. Whenever the reserve fund is reduced below the current
16 balance by expenditures therefrom, the Contractor shall restore that balance
17 by the accumulation of annual deposits, as specified in paragraph (b).

18
19 "(e) During any period in which any of the project works are
20 operated and maintained by the United States, the reserve fund shall be
21 available for like use by the United States.

22
23 "(f) On or before April 30 of each year, the Contractor shall
24 provide an annual statement of the principal of the reserve fund account to
25 the Contracting Officer.

26
27 EXAMINATION AND INSPECTION OF PROJECT WORKS FOR DETERMINING
28 ADEQUACY OF OPERATION, MAINTENANCE AND SAFETY OF DAMS PROGRAMS
29

30
31 10. Article 16 of the Repayment Contract is amended and now reads
32 as follows:

33
34 "16. (a) The Contracting Officer may, from time to time, examine
35 the Contractor's books, records and reports, and the Project works being
36 operated by the Contractor to assist the Contractor in determining the
37 condition of the Project works, and the adequacy of the operation,
38 maintenance, and safety of dams programs, the reserve fund, and the water
39 conservation program. The Contracting Officer may examine any or all of the
40 project works which were constructed by the United States and transferred to
41 the Contractor, or Project works which were constructed by the Contractor
42 with funds advanced or reimbursed by the United States.

43
44 "(b) The Contracting Officer may, or the Contractor may
45 request the Contracting Officer to, conduct special inspections of any
46 Project works being operated by the Contractor and special audits of the
47 Contractor's books and records to ascertain the extent of any operation and
48 maintenance deficiencies, to determine the remedial measures required for
49 their correction, and to assist the Contractor in solving specific problems.
50 Except in an emergency, any special inspection or audit shall be made only
51 after written notice thereof has been delivered to the Contractor by the
52 Contracting Officer.

53
54 "(c) The Contractor shall provide access to the project
55 works, operate any mechanical or electrical equipment, and be available to
56 assist in the examination, inspection or audit.

57
58 "(d) The Contracting Officer shall prepare reports based on
59 the examinations, inspections or audits, and furnish copies of such reports

1 and any recommendations to the Contractor.

2
3 "(e) The Contractor shall reimburse the actual cost incurred
4 by the United States in making operation and maintenance examinations,
5 inspections, and audits, and preparing associated reports and
6 recommendations.

7
8 "(f) The Contracting Officer may provide the State an
9 opportunity to observe and participate, at its own expense, in the
10 examinations and inspections. The State may be provided copies of reports
11 and any recommendations relating to such examinations and inspections.
12

13 14 CHARGES FOR DELINQUENT PAYMENTS

15
16
17 11. Article 19 of the Repayment Contract is amended and now reads
18 as follows:
19

20 "19. (a) The Contractor shall be subject to interest,
21 administrative and penalty charges on delinquent installments or payments.
22 When a payment is not received by the due date, the Contractor shall pay an
23 interest charge for each day the payment is delinquent beyond the due date.
24 When a payment becomes 60 days delinquent, the Contractor shall pay an
25 administrative charge to cover additional costs of billing and processing
26 the delinquent payment. When a payment is delinquent 90 days or more, the
27 Contractor shall pay an additional penalty charge of 6 percent per year for
28 each day the payment is delinquent beyond the due date. Further, the
29 Contractor shall pay any fees incurred for debt collection services
30 associated with a delinquent payment.
31

32 "(b) The interest charge rate shall be the greater of the
33 rate prescribed quarterly in the Federal Register by the Department of the
34 Treasury for application to overdue payments, or the interest rate of 0.5
35 percent per month prescribed by section 6 of the Reclamation Project Act of
36 1939 (Public Law 76-260). The interest charge rate shall be determined as
37 of the due date and remain fixed for the duration of the delinquent period.
38

39 "(c) When a partial payment on a delinquent account is
40 received, the amount received shall be applied, first to the penalty, second
41 to the administrative charges, third to the accrued interest, and finally to
42 the overdue payment."
43

44 45 RULES, REGULATIONS, AND DETERMINATIONS

46
47
48 12. Article 25 of the Repayment contract is amended and now reads
49 as follows:
50

51 "25 (a) The parties agree that the delivery of water or the use
52 of Federal facilities pursuant to this contract is subject to Reclamation
53 law, as amended and supplemented, and the rules and regulations promulgated
54 by the Secretary of the Interior under Reclamation law.
55

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62

CONFIRMATION OF CONTRACT

13. Article 33 of the Repayment Contract is amended and now reads as follows:

"33. The Contractor, after the execution of this contract, shall promptly seek to secure a decree of a court of competent jurisdiction of the State of Utah, confirming the execution of this contract. The Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor. This contract shall not be binding on the United States until such final decree has been secured."

EQUAL OPPORTUNITY

14. Article 35 of the Repayment Contract is amended and now reads as follows.

"35. 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, 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, 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 discrimination because of race, color, religion, sex, 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 said 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, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and

1 the Secretary of Labor for purposes of investigation to ascertain compliance
2 with such rules, regulations, and orders.
3

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

14 "(7) The Contractor will include the provisions of paragraphs
15 (1) through (7) in every subcontract or purchase order unless exempted by
16 the rules, regulations, or orders of the Secretary of Labor issued pursuant
17 to Section 204 of said amended Executive Order, so that such provisions will
18 be binding upon each subcontractor or vendor. The Contractor will take such
19 action with respect to any subcontract or purchase order as may be directed
20 by the Secretary of Labor as a means of enforcing such provisions, including
21 sanctions for noncompliance: Provided, however, That in the event the
22 Contractor becomes involved in, or is threatened with, litigation with a
23 subcontractor or vendor as a result of such direction, the Contractor may
24 request the United States to enter into such litigation to protect the
25 interests of the United States.
26
27

28 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS 29 30

31 15. Article 36 of the Repayment Contract is amended and now reads
32 as follows:
33

34 "36. (a) The Contractor shall comply with Title VI of the Civil
35 Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act
36 of 1975 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42
37 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as
38 with their respective implementing regulations and guidelines imposed by the
39 U.S. Department of the Interior and/or Bureau of Reclamation.
40

41 "(b) These statutes require that no person in the United
42 States shall, on the grounds of race, color, national origin, handicap, or
43 age, be excluded from participation in, be denied the benefits of, or be
44 otherwise subjected to discrimination under any program or activity
45 receiving financial assistance from the Bureau of Reclamation. By executing
46 this contract, the Contractor agrees to immediately take any measures
47 necessary to implement this obligation, including permitting officials of
48 the United States to inspect premises, programs, and documents.
49

50 "(c) The Contractor makes this agreement in consideration of
51 and for the purpose of obtaining any and all Federal grants, loans,
52 contracts, property discounts or other Federal financial assistance extended
53 after the date hereof to the Contractor by the Bureau of Reclamation,
54 including installment payments after such date on account of arrangements
55 for Federal financial assistance which were approved before such date. The
56 Contractor recognizes and agrees that such Federal assistance will be
57 extended in reliance on the representations and agreements made in this
58 article, and that the United States reserves the right to seek judicial
59 enforcement thereof."

1
2 WATER AND AIR POLLUTION CONTROL
3
4

5 16. Article 37 of the Repayment Contract is amended and now reads
6 as follows:
7

8 "37. The Contractor, in carrying out this contract, shall comply
9 with all applicable water and air pollution laws and regulations of the
10 United States and the State of Utah, and shall obtain all required permits
11 or licenses from the appropriate Federal, State, or local authorities."
12

13
14 The Repayment Contract is amended by adding the following articles:
15
16

17 RESERVATION OF INTEREST CLAIMS
18
19

20 "17. The Contractor shall be entitled to assert its claim that
21 interest during construction and interest on the unpaid balance should be
22 determined on the basis of an interest rate of 2.67 percent and that the
23 payments provided for in Subarticle 5(c) herein should be adjusted
24 accordingly. The Contractor shall have 4 years from the date of execution
25 of this Contract in which to seek judicial review on its claims. It is the
26 position of the United States that the provisions of this Amendatory
27 Contract relating to the interest rate to which the Contractor reserved its
28 claims, were made pursuant to applicable provisions of Federal Reclamation
29 Law, and are valid and enforceable. The Contractor shall not be relieved of
30 its obligation to pay, consistent with Subarticle 5(c) herein, based on the
31 reimbursable costs of its share of the Project works allocated to municipal
32 and industrial water, plus interest, as provided herein, for failure of the
33 Contractor to obtain administrative or judicial relief, or during the
34 pendency of any administrative or judicial proceedings regarding said
35 reserve interest claims.
36

37
38 APPROVAL OF CONTRACT BY CONGRESS
39
40

41 "18. This Amendatory Contract will become effective upon its
42 execution but will not be binding on the parties hereto until approved by
43 the Congress of the United States."

1 SEVERABILITY

2
3
4 "19. If any provision of the Repayment Contract or this Amendatory
5 Contract shall, for any reason be determined to be illegal or unenforceable,
6 the parties, nevertheless, intend that the remainder of said contracts shall
7 remain in full force and effect."
8

9
10 ADMINISTRATION OF PROJECT LANDS

11
12
13 "20. The lands and rights-of-way acquired and needed by the United
14 States for the purposes of care, operation, and maintenance of project works
15 may be used by the Contractor for such purposes. The Contractor shall
16 ensure that no unauthorized encroachment occurs on project lands and rights-
17 of-way. The Contractor shall not issue rights-of-way across Project land,
18 issue land rights to project lands, or issue leases, licenses, permits, or
19 special use agreements involving project land, rights-of-way, or transferred
20 works. All such land use instruments shall only be issued by the
21 Contracting Officer."
22

23
24 WATER CONSERVATION

25
26
27 "21. Prior to the delivery of water provided from or conveyed
28 through federally constructed or federally financed facilities pursuant to
29 this contract, the Contractor shall develop an effective water conservation
30 program consistent with the current "Guidelines for the Development of
31 Irrigation Water Conservation Plans" and acceptable to the Contracting
32 Officer. The water conservation program shall contain definite water
33 conservation objectives, appropriate economically feasible water
34 conservation measures, and time schedules for meeting those objectives. At
35 subsequent 5-year intervals, the Contractor shall submit a report on the
36 results of the program to the Contracting Officer for review. Based on the
37 conclusions of the review, the Contracting Officer and the Contractor shall
38 consult and agree to continue or to revise the existing water conservation
39 program."

ALL OTHER PROVISIONS TO REMAIN THE SAME

"22. All other provisions of Repayment Contract No. 6-05-01-00143, dated June 3, 1976, as amended November 1, 1985, not expressly changed or supplemented herein or not in conflict herewith, shall remain the same and all rights, claims, and obligations thereunder shall remain in full force and effect."

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

UNITED STATES OF AMERICA

Approved:

Lynn R. Corwin
Regional Solicitor

By: Robert Robinson
Contracting Officer

ATTEST:

UINTAH WATER CONSERVANCY DISTRICT

By: David L. Hansen
Secretary

By: David L. Murray
President