

K2a 4b

ES



United States Department of the Interior

BUREAU OF RECLAMATION

Great Plains Region
P.O. Box 36900
Billings, Montana 59107-6900

RECEIVED
MO. DAY YEAR

IN REPLY REFER TO:

GP-3100
WTR-4.00

JUL 01 2003

JUN 25 2003

FISH AND WILDLIFE
ECOLG SERVICES

Dr. Ralph Morgenweck
U. S. Fish and Wildlife Service
Region 6
P. O. Box 25486
Denver, CO 80225-0207

Subject: Executed Memorandum of Agreement No. 03XX6C0113 Among the Colorado Water Conservation Board, United States Fish and Wildlife Service and the United States Bureau of Reclamation for Water from Ruedi Reservoir for the Benefit of Endangered Fish, Fryingpan-Arkansas Project

Dear Dr. Morgenweck:

Enclosed for your records is a fully executed duplicate original of the subject agreement. We would like to express our gratitude for the cooperation of the parties involved in executing this agreement.

If you have any questions concerning the enclosed contract, please contact Lynnette Smith at 406-247-7752.

Sincerely,

Maryanne C. Bach
Regional Director

Enclosure

DUPLICATE ORIGINAL

Agreement No. 03XX6C0113

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
FRYINGPAN-ARKANSAS PROJECT
Memorandum of Agreement**

Among

**THE COLORADO WATER CONSERVATION BOARD, THE UNITED STATES FISH
AND WILDLIFE SERVICE AND THE UNITED STATES BUREAU OF
RECLAMATION FOR WATER FROM RUEDI RESERVOIR, COLORADO**

THIS AGREEMENT TO PROVIDE WATER TO AND THROUGH THE 15 MILE REACH OF THE COLORADO RIVER THROUGH THE YEAR 2012 FOR THE BENEFIT OF ENDANGERED FISH, hereinafter referred to as the Agreement, is made this _____ day of _____, 2003, pursuant to Federal Reclamation laws, including the Reclamation Act of June 17, 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto, and in particular Section (9)(c) of the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, and the Fryingpan-Arkansas Project Act of August 16, 1962, as amended (Fry-Ark Act); among the COLORADO WATER CONSERVATION BOARD, hereinafter referred to as the "CWCB"; the UNITED STATES FISH AND WILDLIFE SERVICE, hereinafter referred to as the "Service"; and the UNITED STATES BUREAU OF RECLAMATION, hereinafter referred to as "Reclamation", represented by the Contracting Officer executing this Agreement; and jointly referred to as the "Parties."

WHEREAS, the following statements are made in explanation:

EXPLANATORY RECITALS

- a. WHEREAS, the Secretary of the Interior (Secretary), acting through Reclamation, was authorized by the Fry-Ark Act to construct, operate and maintain the Fryingpan-Arkansas Project (Project) in substantial accordance with House Document Numbered 187, Eighty-third Congress; as modified by House Document 353, Eighty-sixth Congress; and
- b. WHEREAS, Section 1 of the Fry-Ark Act states that water supply will be for irrigation, municipal, industrial, hydro power, flood control and other beneficial incidental uses including conservation and development of fish and wildlife; and
- c. WHEREAS, Section 3 of the Fry-Ark Act states that the Project shall be operated in accordance with the Operating Principles; and
- d. WHEREAS, as described in the letter dated December 20, 2002, to the Chairman, Management Committee, Upper Colorado Fish Recovery Program, from the Area Manager, Eastern Colorado Area Office, Great Plains Region, Bureau of Reclamation, and confirmed by

return letter to the Regional Director, Great Plains Region, dated April 24, 2003, Reclamation will absorb the capital costs (plus interest) of the water provided pursuant to this Agreement; and the Recovery Program will report the capital costs so absorbed as a Reclamation contribution to the Recovery Program, made in addition to its other cost share commitments; and the Recovery Program will pay the annual Operation and Maintenance (O&M) costs associated with the water; and

e. WHEREAS, Section 4 of the Fry-Ark Act directs the Secretary to investigate, plan, construct, operate, and maintain facilities for the conservation and development of fish and wildlife resources, and that the costs of such undertakings shall be nonreimbursable and nonreturnable under Reclamation laws; and

f. WHEREAS, Section 5(e) of the Fry-Ark Act directs the Secretary in the operation and maintenance of all facilities of the Project to comply with the laws of the State of Colorado relating to the control, appropriation, use, and distribution of water therein; including those laws of the State of Colorado relating to the establishment of instream flows for the reasonable protection of the natural environment to the extent that such laws are not inconsistent with the Operating Principles; and

g. WHEREAS, Ruedi Reservoir, located on the Fryingpan River upstream of the town of Basalt, was authorized and constructed as a feature of the Project; and

h. WHEREAS, the Operating Principles provide that water stored in the Regulatory Capacity of Ruedi Reservoir may be sold or leased by the United States to water users in Colorado for any purpose recognized by the laws of the United States; and

i. WHEREAS, the Supplemental Decree for the Project entered by the Garfield County District Court, Colorado, in Civil Action 4613 on August 3, 1959, allows water stored in the Regulatory Capacity of Ruedi Reservoir to be sold or leased by the United States to water users in western Colorado for any purpose recognized by the laws of the United States; and

j. WHEREAS, the Marketable Yield within the Regulatory Capacity of Ruedi Reservoir includes water that has not been committed to long-term contracts and that has been released, on a temporary basis, to benefit endangered fish in the 15 Mile Reach of the Colorado River; and

k. WHEREAS, the CWCB is authorized by Section 37-92-102(3), Colorado Revised Statutes, as amended, to acquire by lease from any person, including any governmental entity, such water or interests in water as the CWCB determines may be required for instream flows to preserve or improve the natural environment to a reasonable degree and to take whatever action may be needed to ensure such instream flows remain in the river; and

l. WHEREAS, pursuant to Article 92, Title 37, Colorado Revised Statutes, as amended, the State Engineer's Office is responsible for the administration and distribution of the waters of the State, and, under Section 37-92-102(3), the CWCB may call upon the State Engineer and Division 5 Engineer to administer water or interests in water held by the CWCB for instream

flows to preserve or improve the natural environment to a reasonable degree within the 15 Mile Reach, and which enforcement actions are more fully described in the September 21, 1993 Enforcement Agreement between the CWCB and the Service.

m. WHEREAS, the CWCB has determined that leasing water from the Regulatory Capacity of Ruedi Reservoir for instream flows in the 15 Mile Reach will contribute to preserving the natural environment to a reasonable degree and is consistent with the CWCB's authorities under Section 37-92-102(3), Colorado Revised Statutes, as amended; and

n. WHEREAS, the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) and the Interagency Cooperative Regulations (50 CFR§ 402), establish the legal framework for implementation of Endangered Species Recovery Programs; and

o. WHEREAS, the Secretary joined the Governors of Colorado, Wyoming, and Utah and the Administrator of the Western Area Power Administration in executing a cooperative agreement on January 21-22, 1988, to implement the Recovery Program, subsequently extended through September 30, 2013; and

p. WHEREAS, elements of the Recovery Program include acquiring water and water rights to protect the habitat of the endangered fish and to conduct research to identify the flow and habitat needs of the endangered fish; and

q. WHEREAS, the Programmatic Biological Opinion (PBO) addressed (1) impacts to critical habitat for endangered fish species that are related to both existing and future water depletions that occur in the Upper Colorado River Basin above the confluence with the Gunnison River and (2) recovery actions designed to offset these impacts; and

r. WHEREAS, this Agreement is being executed to fulfill the recovery actions described on pages 8-9 of the PBO; and

s. WHEREAS, on February 21, 1990 Reclamation and CWCB entered into a 40-year agreement No. 0-07-60-W0540 with concurrence from the Service to provide up to 10,000 acre-feet of water per year, as further disclosed in that agreement, from the Regulatory Capacity of Ruedi Reservoir. The commitments in that agreement were discussed in the PBO.

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants hereinafter set forth, the Parties hereto agree as follows:

I. DEFINITIONS

Where used herein, unless specifically expressed otherwise or obviously inconsistent with the intent herein, the term:

A. "Contracting Officer" shall mean the Secretary of the Interior or a duly authorized representative. Unless stated otherwise, the Contracting Officer shall be deemed to be the Secretary's authorized representative.

B. "Division 5 Engineer" shall mean the Colorado State Division of Water Resources, Water Division 5, Division Engineer.

C. "Marketable Yield" shall mean the 46,500 acre-feet of water estimated to be available from the Regulatory Capacity of Ruedi Reservoir, which consists of the 7,850 acre-feet previously sold under Round I, and the 38,650 acre-feet available for the Round II water sales.

D. "Operating Principles" shall mean the Fryingpan-Arkansas Project Operating Principles set forth in House Document 130, 87th Congress, 1st Session, 1961.

E. "Operation and Maintenance (O&M) costs associated with the water" shall mean the appropriate proportion of those costs incurred to operate and maintain Ruedi Reservoir, including any administrative, overhead, or general expenses incurred by the United States, either directly or indirectly, in the operation and maintenance of Ruedi Reservoir and in the administration of this Agreement.

F. "PBO" shall mean the "Final Programmatic Biological Opinion for Bureau of Reclamation's Operations and Depletions, other Depletions, and Funding and Implementation of Recovery Program Actions in the Upper Colorado River above the Confluence with the Gunnison River," issued by the Service in December 1999 and accepted by the Regional Director, Great Plains Region, Bureau of Reclamation in January 2000.

G. "Project" shall mean the Fryingpan-Arkansas Project, Colorado.

H. "Recovery Program" shall mean the Recovery Implementation Program for the Endangered Fish Species in the Colorado River Basin that was implemented through a January 1988 cooperative agreement among entities including the Secretary, the Governors of Colorado, Wyoming and Utah and the Administrator of the Western Area Power Administration, and subsequently extended through September 30, 2013.

I. "Regulatory Capacity" shall be defined as it is in paragraph 6(b) of the Operating Principles.

J. "Target Flows" shall mean the recommended mean monthly flows at the upstream end of the 15 Mile Reach in cubic feet per second (cfs). These flows are presented in the Flow Needs for Endangered Fishes section of the PBO and in Table 8 of the U.S. Fish and Wildlife Service publication, "Relationships Between Flow and Rare Fish Habitat in the '15 Mile Reach' for the Upper Colorado River, Final Report, May 1995." These Target Flows may not be achieved each year, and will be evaluated and possibly revised through the adaptive-management process of the Recovery Program and implementation of the individual species Recovery Goals.

K. "Year" shall mean the period beginning on January 1 and ending the following December 31, and the term "annually," as used herein, shall also mean this period of time unless otherwise specified.

L. "15 Mile Reach" shall mean the portion of the Colorado River that extends from the confluence of the Gunnison River upstream 15 miles to the Grand Valley Irrigation Company Diversion Dam near Palisade, Colorado.

II. TERM OF AGREEMENT

This Agreement becomes effective on the date executed and shall remain in effect through December 31, 2012, unless terminated sooner in accordance with the provisions of Article IX below, or amended pursuant to Article VIII below.

III. PROVISION OF WATER, RELEASE SCHEDULE, AND OPERATIONAL MEASURES

A. The Project shall be operated in accordance with the "Operating Principles".

B. Reclamation shall provide up to 10,825 acre-feet of water annually, upon request of the Service, from the Marketable Yield of Ruedi Reservoir. Water shall be released for use by the Service and the CWCBC for summer and fall base flow augmentation in the 15 Mile Reach.

C. Reclamation shall release the water, except as provided in D. below, under this Agreement to the Fryngpan River at the outlet works of Ruedi Reservoir. All releases of water shall be limited by the capacity of the outlet works.

D. Reclamation reserves the right to fulfill the commitments of this Agreement with water that has been lawfully stored in priority in reservoirs other than Ruedi Reservoir; Provided, however, that releases from alternate reservoirs shall be in conformity with the water right decrees for such reservoirs and shall comply with state law. When supplied from an alternate reservoir, the water shall be released by the Contracting Officer from the outlet works of such alternate reservoir, and shall be limited by the capacity of such outlet works.

E. Water generally will be released by Reclamation upon the request of the Service between early July and late October of each year up to the amount needed to contribute toward meeting the Target Flows, or as agreed to by the Parties, except as provided in Article VII. The Service recognizes that water conservation is a priority for all water contractors and will look at the prevailing hydrologic conditions, the quantity of water available, the Target Flows, prior year conditions and other appropriate factors, and will request water conservatively to meet fish needs.

F. In consultation with the Service, the amount, timing, and rate of the releases, under this Agreement, shall be determined by the Contracting Officer or her authorized representative.

Reclamation will notify the CWCB and the Division 5 Engineer of the date, time, and amount of the water released. The Service and Reclamation will consult with the CWCB during the release period to achieve the objectives of Reclamation, the Service and the CWCB.

G. Reclamation will continue to attempt to make release adjustments of no more than 50 cfs increments when feasible and consistent with the multiple Project purposes. This measure strives to minimize potential impacts of rapidly changing flows on aquatic biota, rescue activities, recreation interests, and stream bank stability, while complying with Colorado water law and providing Reclamation operational flexibility.

H. Reclamation will evaluate the final results of the Roaring Fork Conservancy fishery study being conducted by Miller Ecological Consultants, Inc. Reclamation will coordinate with the Colorado Division of Wildlife to assess recommendations in the study and work towards implementing those appropriate measures and monitoring techniques that are feasible and consistent with the multiple Project purposes.

I. In an effort to address concerns with flows over 250 cfs, efforts will be made to limit cumulative flows to 250 cfs or less when consistent with the multiple Project purposes and reasonable to do so, and so long as future fishery research does not indicate that flows in excess of 250 cfs are important for Fryngpan or Roaring Fork River fishery maintenance or enhancement.

J. The CWCB shall take such action under state law, including requesting administration by the State Engineer's Office and initiating water court proceedings, as may be necessary to deliver the water from the outlet works of the dam from which the water is released to the beginning of the 15 Mile Reach and to protect the release from diversion by third parties within the 15 Mile Reach, subject to such transit losses as may be imposed by the State Engineer or the Division 5 Engineer.

IV. WATER SERVICE CHARGES

A. There will be no charge to the Service or the CWCB for water made available pursuant to this Agreement.

B. Reclamation will absorb the capital costs (plus interest) of the water provided pursuant to this Agreement; the Recovery Program will report the costs so absorbed as a Reclamation contribution to the Recovery Program, made in addition to its other cost share commitments; and the Recovery Program will pay the annual Operation and Maintenance (O&M) costs associated with the water.

V. MEASUREMENT AND DELIVERY

A. Releases made pursuant to this Agreement will be measured at the outlet works by the Contracting Officer.

B. The Service, through the Recovery Program, shall install, operate, maintain, and replace any waterflow measuring and recording devices necessary to ensure that the water is delivered to and through the 15 Mile Reach.

C. CWCB shall ensure that all water released by Reclamation pursuant to this Agreement, less transit losses, as measured at the Palisade Gage, will be delivered and protected by the Division 5 Engineer to and through the 15 Mile Reach.

D. Reclamation shall not be responsible for the delivery, control, carriage, use, handling, or distribution of water provided pursuant to this Agreement, delivered beyond the outlet works of the reservoir or other point of release.

VI. USE OF WATER

A. Water made available pursuant to this Agreement shall be used by the Service to contribute toward meeting the Service's Target Flows in the 15 Mile Reach.

B. No lease, sale, donation, or transfer of any of the water provided pursuant to this Agreement may be made without prior written approval by Reclamation.

VII. WATER SHORTAGE AND APPORTIONMENT

A. The Contracting Officer shall operate the Project in accordance with the Operating Principles.

B. 1. If the Contracting Officer determines that a water shortage may occur, the Contracting Officer will request the Service to submit a schedule of its anticipated monthly demands for the delivery of water pursuant to this Agreement. The Service agrees to supply such schedule in a timely manner. The Contracting Officer will review the schedule along with anticipated demand schedules submitted by the other Ruedi contractors to determine if there is sufficient water to meet the needs identified.

2. If the Contracting Officer determines that, based on the schedules, there may not be sufficient water to meet the need for water under this Agreement and for other Ruedi contracts and a shortage may need to be declared, Reclamation, CWCB, and the Service will work cooperatively, in coordination with the Recovery Program, to determine how the Service could conserve water in the best immediate and longer-term interests of all water users with Ruedi contracts. Coordination with the Recovery Program will be through a designated representative and will include consultation on a regular basis, usually weekly, with participants in the Coordinated Reservoir Operation System (CROS) efforts, entities involved in determination of the Green Mountain Historic User Pool (HUP) Surplus Water, and others as appropriate, to ensure that all water user needs are addressed. The Service agrees to participate by conservatively managing water available under this Agreement, and water available to the Service from their other sources dedicated to the endangered fish in the 15 Mile Reach, by providing sufficient flows to freshen pools and connect pools, riffles and runs without

necessarily adhering to currently recommended Target Flows. Conservative management of available water will be addressed on a year-by-year basis to react to prevailing hydrologic conditions and other appropriate factors. Any agreements may be set forth by the Contracting Officer in an administrative letter, if appropriate.

C. Notwithstanding the provisions of Article VII.B., if the Contracting Officer determines that a shortage exists in the regulatory capacity, the following provisions shall apply:

1. For purposes of this subarticle, this Agreement shall be considered to be a long term Ruedi Round II contract.

2. Water delivered pursuant to this contract is provided from the regulatory capacity of Ruedi Reservoir. Should shortages occur to the regulatory capacity, as determined by the Contracting Officer pursuant to this subarticle C, such shortages will be apportioned among the Ruedi Reservoir contractors in the following manner: first, deliveries to all temporary and short-term contractors will be proportionately reduced up to 100 percent of their respective contracted amounts; second, deliveries to all Round II contractors will be proportionately reduced up to 100 percent of their respective contracted amounts; third deliveries to all Round I municipal contractors will be proportionately reduced up to 30 percent of their respective contracted amounts; and finally, deliveries to all Round I contractors will be reduced up to 100 percent of their respective contracted amounts based on contract execution dates with the earliest date having highest priority; Provided, That the deliveries to all contracts with the same execution dates shall be proportionately reduced up to 100 percent of their respective remaining contracted amounts.

VIII. AMENDMENT

This Agreement may be amended only by a fully executed written agreement by the Parties. Any request to amend this Agreement shall be given in the same manner as provided in Article X. below.

IX. TERMINATION

The Contracting Officer, CWCB or the Service may terminate this Agreement for just cause at any time upon providing 60 calendar days notice. In the event of termination, the procedures of the October 15, 1993 Section 7 Agreement, as revised, will apply.

X. NOTICES

A. Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of the CWCB or the Service when mailed, certified, postage prepaid, or delivered to the Regional Director (Contracting Officer), Bureau of Reclamation, Great Plains Region, P.O. Box 36900, Billings, Montana 59107-6900; and on

behalf of the Contracting Officer, when mailed, certified, postage prepaid or delivered to each of the entities listed below:

Director, CWCB, 721 State Centennial Building, 1313 Sherman Street, Denver, Colorado 80203.

Regional Director, Region 6, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver, Colorado 80225-0207.

B. The designation of the addressee or the addresses may be changed by notice given in the same manner as provided in this Article.

C. All notices, demands, or other requests given pursuant to this Article X shall be effective on the date of mailing when sent to all Parties by certified mail, return receipt requested or upon receipt (if personally delivered).

XI. ASSIGNMENT OF THE AGREEMENT - FULL FORCE AND EFFECT

A. The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Agreement or any right or interest therein shall be valid until approved in writing by the Contracting Officer.

B. This Agreement will not be in full force and effect until executed by all Parties.

XII. ENVIRONMENTAL COMPLIANCE

The National Environmental Policy Act compliance for this Agreement to provide water for the benefit of endangered fish was evaluated and documented by Environmental Assessment No. EC-1300-02-01 and a Finding of No Significant Impact No. EC-1300-02-01 dated May 22, 2003.

XIII. REPORTING

A. The Service will provide Reclamation, the CWCB and interested parties with copies of routinely produced Recovery Program reports, or Internet links to such reports, that provide information on the status of listed species and, if possible, benefits of water released under this contract and other water sources. These reports will include the following:

1. Annual Program Highlights
2. Biannual Program Directors Reports to the Implementation Committee
3. Population estimates

Other reports which are produced from time to time may include:

1. Recovery Program Annual Study Progress reports relating to the status of the listed species.

2. Recovery Program Annual Study reports relating to the status of river geomorphology and fish habitat.
3. Published Study Reports from studies referenced above.

B. Reclamation shall provide annually a report, or Internet links to such report, to the CWCB and the Service describing the operation of Ruedi Reservoir, including release rates, storage contents, the impacts on recreational use and facilities and the benefits to hydropower production during the period of releases made pursuant to this Agreement. Such report may be included in the Project Annual Operating Plan, any other report regularly prepared by Reclamation, or issued as a separate report.

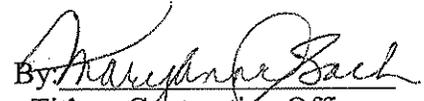
XIV. STANDARD ARTICLES

The standard articles applicable to this Agreement are listed below. The full text of these standard articles is attached as Exhibit A and is hereby made a part of this Agreement by this reference.

1. Contingent Upon Appropriation or Allotment of Funds
2. Officials Not to Benefit
3. Rules, Regulations, and Determinations
4. Protection of Water and Air Quality
5. Books, Records, and Reports
6. Equal Employment Opportunity
7. Compliance with Civil Rights Laws and Regulations
8. Certification of Nonsegregated Facilities

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

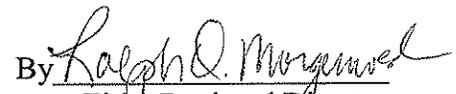
BUREAU OF RECLAMATION

By: 
Title: Contracting Officer
Great Plains Region

COLORADO WATER CONSERVATION BOARD

By: 
Title: Director

U.S. FISH AND WILDLIFE SERVICE

By: 
Title: Regional Director
Mountain-Prairie Region

STANDARD CONTRACT ARTICLES

CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

OFFICIALS NOT TO BENEFIT

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

RULES, REGULATIONS, AND DETERMINATIONS

3. (a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this Agreement 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.

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

PROTECTION OF WATER AND AIR QUALITY

4. (a) 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.

(b) The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Colorado; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery 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 Contractor facilities or project water provided by the Contractor within the Contractor's Project Water Service Area.

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

BOOKS, RECORDS, AND REPORTS

5. 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; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing, and 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 agreement 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 Agreement.

EQUAL EMPLOYMENT OPPORTUNITY

6. During the performance of this Agreement, the Parties agree as follows:

(a) The Parties will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The Parties 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 Parties agree 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.

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

(c) The Parties 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 Parties 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.

(d) The Parties 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.

(e) The Parties 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.

(f) In the event of the Parties noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part, and the Parties 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.

(g) The Parties will include the provisions of paragraphs a through g 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 Parties 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 Parties become involved in, or are threatened with, litigation with a subcontractor or vendor as a result of such direction, the Parties may request the United States to enter into such litigation to protect the interests of the United States.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

7 (a) The Parties 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.

(b) 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 Agreement, the Parties agree to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(c) The Parties make 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 other Parties 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 Parties recognize and agree 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.

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

CERTIFICATION OF NONSEGREGATED FACILITIES

8. Each of the Parties hereby certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Each of the Parties certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Each of the Parties agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in this Agreement. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, disability, or otherwise. Each of the Parties further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF
NONSEGREGATED FACILITIES**

9. A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.