United States Department of the Interior

BUREAU OF RECLAMATION
1150 North Curtis Road, Suite 100
Boise, Idaho 83706-1234

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:

JAN 2 9 2009

PN-3322/UCA-1003
WTR-4.00

Washington State Department of Ecology
Mr. Jay Manning, Executive Director
P.O. Box 47600
Olympia, WA 98504-7600

Subject: Water Storage and Exchange Contract, Contract No. 09XX101700, Between the Bureau of Reclamation and the State of Washington Department of Ecology, Yakima Project, Washington

Dear Mr. Manning:

Enclosed for your records is an original of the fully executed subject contract, Contract No. 09XX101700, between the United States of America and the Washington State Department of Ecology (Ecology). Please note that the contract was modified prior to execution on behalf of the United States to reflect the changes to Article 10(f) and Article 18(b) that were mutually discussed and made at the time of execution by Ecology.

Enclosed is a billing statement in the amount of $1,100, prepared in accordance with Article 15(a) of the contract. Payment of this bill is due within 60 days of the date of execution of the contract.

Thank you for the prompt execution of the contract. If you have any questions, please contact Mr. Michael Cobell at the above address, or by telephone at 208-378-5223, or Mr. William Ferry in our Upper Columbia Area Office, at 509-575-5848 extension 244, respectively.

Sincerely,

TIMOTHY L. PERSONIUS

Timothy Personius
Acting Regional Director

Enclosures - 2

cc: Mr. Bob Barwin
Washington State Department of Ecology, Central Washington Office
15 West Yakima Ave, Suite 200
Yakima, WA 98902-3452
(w/encls)

Contract No. 09XX101700

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Yakima River Basin Project, Washington

LONG-TERM WATER STORAGE AND EXCHANGE AGREEMENT BETWEEN THE UNITED STATES and THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

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Contract No. 09XX101700

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLMATION

YAKIMA RIVER BASIN PROJECT

LONG-TERM WATER STORAGE AND EXCHANGE AGREEMENT BETWEEN
THE UNITED STATES
and
THE STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY

THIS CONTRACT, made this 29th day of January, 2009, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, and particularly section 14 of the Reclamation Project Act of August 4, 1939 (Pub. L. 76-260; 43 U.S.C. sec. 389), and the Yakima River Basin Water Enhancement Act (YRBWEP), Title XII, Pub. L. 103-434, 108 Stat. 4550 (1994), between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, 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, hereinafter referred to as the State,

WITNESSETH, THAT:

EXPLANATORY RECITALS

2. WHEREAS, the United States, acting through the Bureau of Reclamation (Reclamation), constructed and is operating the Yakima Project (Project), Washington, for the storage and delivery of water for irrigation and other beneficial uses; and

3. WHEREAS, Reclamation intends to facilitate voluntary transfers of project water in such a way that the Federal government is in no lesser financial position than it would have

been without transfers; and

4. WHEREAS, the United States and the State of Washington Department of Ecology (Ecology) have entered into a Memorandum of Understanding (MOU), dated March 7, 2007, pertaining to assignment of senior water rights acquired by Ecology for a commensurate amount of water to be stored in Project storage facilities for the furnishing of water to municipal and domestic uses; and

5. WHEREAS, due to regular drought conditions in the Yakima Basin, Reclamation's operation of the Project under various Court Orders and Opinions, and the obligation to prorate or curtail certain post-1905 water rights during drought years, Ecology requires Reclamation storage facilities to effectuate transfers and exchanges of senior water rights for the benefit of small municipal and domestic water users; and

6. WHEREAS, Domestic and municipal water users with post-1905 water rights or water users who purchase and transfer senior seasonal water rights that qualify for priority processing under Chapter 173-152-050 Washington Administrative Code (WAC) have preference, but this contract may also secondarily, be used to assist water users with certain transferred senior water rights requiring mitigation; and

7. WHEREAS, Ecology is expected to issue, under its authority, including the Trust Water Program, time limited permits from this stored supply to enable the water users to obtain alternative or supplemental supplies so that during times of prorationing they may continue water use under the alternate or supplemental supply; and

8. WHEREAS, as consideration for the storage of water by Reclamation, Ecology agrees to advance funds for its proportionate share of project construction, operation, and maintenance (O&M) costs annually and other costs; and

9. WHEREAS, for the purpose of orderly and economical operation and maintenance of the Project the United States recognizes that the exchange of water provided hereunder will benefit the public interest and the interests of the United States to assist rural communities and protect and restore critical habitat for fish and other species; and

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

DEFINITIONS

10. The following terms hereinafter used in this contract shall have the following respective meanings:

(a) "Assigns" means to designate, identify, and segregate subject trust water rights for purposes of storage or release of trust water rights pursuant to this contract and related contracts or agreements.

(b) "Mitigation" as used in this contract means to offset the consumptive use at Parker associated with a new permit such that the new permit is a water budget neutral project, or to offset impacts to Project Operations and/or impacts to the Yakama Nation's time immemorial instream flow right at other points within the Yakima Basin.

(c) "Consumptive use at Parker" means the consumptive use associated with the historical exercise of a water right to divert water from the Yakima River or a stream tributary to the Yakima River as measured at Parker.

(d) "Water Budget Neutral Project" means a project where releases of an equivalent or greater amount of water previously stored by Reclamation and placed into Ecology's Trust Water Right Program are assigned to compensate for diversions or withdrawals of waters of the State so as to result in no negative impact to TWSA.

(e) "Non-program water user" means any valid water user not participating in an exchange resulting from this contract.

(f) "Parker" means the "Yakima River near Parker, WA."

(g) "Permit" means an approval by Ecology relating to the use of water stored and delivered under this contract authorizing the beneficial use of public waters under Chapters 90.03 or 90.44, Revised Code of Washington (RCW). The permit may be associated or consolidated with Ecology's approval for a change to or transfer of an existing water right.

(h) "Source" means an aquifer or surface water body, including a stream, stream system, lake, or reservoir and any spring water or underground water that is part of or tributary to the surface water body or aquifer that Ecology determines to be an independent water body for the purposes of water right administration. (WAC 173-152-020(5)).

(i) "Third-Party permittees" means water users receiving water under this program pursuant to agreement or permit issued by Ecology.

(j) "Trust water right" means a water right held by the state in accordance with Chapters 90.38 and 90.42 RCW.

(k) "TWSA" Total Water Supply Available, means the amount of water calculated by Reclamation to be available to Yakima Project Water Users pursuant to the 1945 Consent Decree and the *Acquavella Final Decree.*

(l) "Value" means the amount of water calculated for "source availability matching" as described further in Article 14 (f), below.

(m) "WTWG" means the Water Transfer Working Group.

(n) "Water User" means a person relying on a permit issued by Ecology mitigated in whole or in part on a trust water right assigned to this contract.

(o) "YRBWEP" means the Yakima Basin River Water Enhancement Project.

TERM OF CONTRACT

11. (a) 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.

(b) Except for renewals as provided in Article 11(a), above, the parties understand and agree that no provisions of this contract, or the storage and delivery of water herein provided shall be considered as binding the Contracting Officer to store and deliver water to Ecology after the expiration of this contract.

STORAGE, ACQUISITION, and EXCHANGE OF WATER

12. (a) The Contracting Officer shall store, on behalf of and make available to Ecology, from the Project storage system, up to a total of 1,000 acre-feet (AF), annually, of assigned and exchanged water rights for Ecology to provide to third-parties under permits for beneficial purposes under the process prescribed in EXHIBIT A.

(b) The provisions of EXHIBIT A hereto attached and by this reference are made a part of this contract. Any modification to the form and procedure of the permits shall be satisfactory to and approved by the Contracting Officer or duly authorized representative, as herein provided.

(c) In exchange and as consideration for the storage of water provided herein,

Ecology agrees to acquire, by purchase or acceptance, and hold in the Trust Water Program, senior water rights of equal annual quantity, (calculated value as described in article 14(f)), as the quantity of water to be stored; these Trust Water Rights held and assigned as mitigation for the permits issued by Ecology from the stored water.

(d) Ecology permits (further described in EXHIBIT A to this contract) shall not be deemed to be subcontracts or sub-agreements to this contract. That is, Reclamation is not a party to any sub-contracts, sub-agreements, or permits between Ecology and water users described herein.

(e) A copy of permits shall be submitted to the Contracting Officer at the following address: Bureau of Reclamation, Upper Columbia Area Office, 1917 Marsh Rd., Yakima, WA 98901.

(f) Permits shall have a term equal to or less than the remaining term of this contract.

(g) Permits shall refer to and be subject to the terms and conditions of this contract.

(h) Reclamation will not accept assignment of an interest in any trust water rights that has the effect of increasing the consumptive use of any water right or impairing or reducing the TWSA including storage, or undertaking or approving any other action that will have a localized impact on streams or river reaches. This includes impairment of the Yakama Nation's instream flow water right, even if such action does not otherwise increase consumptive use of water or reduce TWSA.

(i) The obligation of Reclamation to store and deliver water under this contract is subject to an operating plan for the Project determined in accordance with the law

governing the Project and other applicable state and federal laws, including but not limited to the Endangered Species Act (16 U.S.C. § 1531 *et seq.*) (ESA). Furthermore, the obligation of Reclamation to store and deliver water under this contract shall be subject and subordinate to a determination of water availability to be made annually by Reclamation, taking into account the operating plan for the Project, water forecasts, and other factors, including but not limited to those that may affect the ability of Reclamation, under the ESA, to provide flows for candidate, listed, or proposed species, or to protect or preserve designated or proposed critical habitat.

DELIVERY - GENERAL

13. (a) Reclamation will deliver water at the outlet works of the Project reservoir best suited, at the discretion of Reclamation, for the delivery by Ecology to those holding permits and using water consistent with this agreement. Ecology shall suffer all distribution and administration losses from the point of such delivery to the place of use. Ecology agrees to provide a measuring device, if lacking, which is acceptable to the Contracting Officer, at or near Ecology's point or points of diversion to measure the quantity of water under this contract.

(b) Reclamation shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water taken by Ecology hereunder, and Ecology shall hold Reclamation harmless on account of damage or claim of damage of any nature whatsoever, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, or disposal of such water by Ecology.

(c) 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.

(d) The storage and assignment of water, as described above, does not circumscribe Reclamation's flexibility, discretion, and protection of all river operations, maintenance, and safety needs, and the protection of non-program water users and water right holders.

DELIVERY – SPECIFIC

14. (a) The trust water right assigned to Reclamation will maintain its elements, including priority date.

(b) The maximum amount of water to be delivered will be limited to the consumptive amount of water associated with the trust water right assigned, less any amount required to benefit fisheries and other aquatic resources identified in section (c) below. Further, that amount will be limited to:

(1) The amount of water available at the original point of diversion of the trust water right assigned to Reclamation; and

(2) The amount of otherwise unused storage capacity in project reservoirs that is available for storage. Reclamation will calculate the amount of storage on a month-to-month basis during the irrigation season and will identify a volume of stored water at the end of the irrigation season which is available for use until the beginning of the subsequent irrigation season, unless the reservoirs are first filled or Reclamation is otherwise required to release the stored trust water rights.

(c) Substantial Environmental Benefit/ Fisheries benefit: Ecology will ensure that a transfer and any new associated or consolidated permit will be prioritized in accordance with the Hillis Rule (WAC 173-152). This objective applies to all water rights placed into the

State Trust Water Program (TWP) for the purpose described in this contract. For water users who choose to participate, the environmental and/or fisheries benefits may be demonstrated in the following manner:

(1) Ecology acquires and assign water right(s) within the Yakima Basin from a priority tributary stream identified by Ecology's water acquisition program or YRBWEP;

(2) When Ecology acquires and assigns water right(s) with a source on the main-stem Yakima River above Parker the following two options are also available,

(a) Ecology acquires and assigns the water right(s) from the transferred right a one-third portion of the acquired water right to be managed within the Trust Water Right Program for instream flow purposes to benefit the Yakima River below Parker if consistent with the other provisions of this contract, or

(b) A water user not wishing to convey one-third of the water right for instream flow purposes, may submit a proposal to Ecology that demonstrates the net environmental and/or fisheries benefits of that proposal. Ecology will review the proposal and consult with the Yakama Nation and the Washington Department of Fish and Wildlife to determine if the applications associated with the proposal can receive expedited processing in accordance with Chapter 173-152 WAC.

(d) Non-Impairment:

(1) Ecology will include in each permit a provision stating that valid priority calls against the source trust water right, based on local limitations in water availability, will result in temporary curtailment of the use of water under the permit until the priority call for water ends.

(2) Ecology and Reclamation agree that implementation of this contract shall not cause detriment or injury to the rights of other existing water users, and that the execution of any subsequent permits pursuant to this contract shall not cause detriment or injury to the rights of existing water users or otherwise be inconsistent with this agreement.

(3) So long as it continues to exist and regularly meet, the parties intend to continue to vet with the WTWG to examine each acquisition and permit for all water rights transferred or changed under this contract and subsequent renewals. Ecology will perform an impairment analysis consistent with applicable law for transfers and changes to water rights.

(e) Non-use and Reallocation: Where the permit holder does not beneficially use the water identified and deliverable under this program for its permitted use, Ecology may reallocate that water to another user. Applicants for a permit under this program must demonstrate a reasonable schedule to put the water to use and a bona-fide beneficial use of the water. If proposed for purposes other than domestic or municipal water supply purposes, infrastructure must be installed as required by the schedule in Ecology's permit or water right change authorization approving the use. For domestic or municipal purposes, the use must be identified in a water system plan if one is required pursuant to Chapters 246-290 and/or 246-293

WAC and infrastructure must be installed as required by the schedule in Ecology's permit or water right change authorization.

(f) Source availability matching:

(1) Ecology will maintain an inventory and account of exchange program water rights and their associated permits. Reclamation and Ecology will jointly monitor the performance of this program.

(2) Ecology will use generally accepted techniques for calculating the consumptive use and normal return flow characteristics associated with each acquired trust water right. A monthly schedule of the consumptive and nonconsumptive fractions of each assigned trust water right will be described in the Report of Examination and Trust Water Right Certificate.

(3) Permits issued by Ecology will be conditioned to ensure that the quantity of water allowed does not exceed that amount of water available under the acquired trust water right nor exceed the availability of unused storage capacity to retain the trust water right for later release. (See, Ecology policy POL-1022, "Priority Processing – Yakima River Basin Water Budget Neutral Projects.")

RATE AND METHOD OF PAYMENT FOR STORAGE AND DELIVERY OF WATER

15. (a) A payment of $1,100.00 shall be made to the United States within 60 days of the date of execution of this contract, and subsequent annual payments shall be made to the United States or to its authorized fiscal agent on or before April 1 of each succeeding year during the term hereof: Provided, that the annual payment amount shall be equal to the rate per acre-foot established in sub-article 15(c) multiplied by the actual number of acre-feet of assigned and

exchanged water rights as of January 31 of the year the payment is due: Provided, further, that whenever Ecology requests to assign and exchange water rights after January 31, it shall do so with an accompanying payment equal to the rate per acre-foot established in sub-article 15(c) multiplied by the number of acre-feet of assigned and exchanged water rights identified in its request within 60 days: Provided, further, that regardless of the amount of water stored and delivered to Ecology, the annual payment will be no less than a minimum of $1,100.

(b) Ecology may cancel storage and delivery for the remainder of the term of this contract, by written notice to the Contracting Officer at least 60 days prior to the first date of storage or delivery of assigned and exchanged water rights, and in the event of such cancellation, no minimum charge shall apply.

(c) The annual payment is based on an initial rate of $22.00 per acre-foot of assigned and exchanged water rights and is determined in accordance with applicable Reclamation law and policy. From time to time, but not less often than once every 5 years, the applicable annual payment and the minimum annual charge shall be reviewed by the Contracting Officer and revised, if necessary, by the Contracting Officer, taking into account any changes in Reclamation law and policy, project costs, allocation of costs, interest rates, or other related factors. Ecology may at any time request, in writing, that the annual payment and minimum annual charge be reviewed by the Contracting Officer. Ecology shall be responsible for funding such Ecology requested reviews of the annual payment and minimum annual charge. Any revision by the Contracting Officer will apply only to future payments and shall be announced by written notice to Ecology at least 3 months prior to the beginning of the storage and delivery season for the assigned and exchanged water rights for which the new rate would be applicable.

(d) 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 and mailed to the following Lockbox address:

Bureau of Reclamation
PN Region: Pacific Northwest
PO Box 894240
Los Angeles, CA 90189-4240

(e) Upon execution of the contract, Ecology shall furnish the Contracting Officer with its 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.

CHARGES FOR DELINQUENT PAYMENTS

16. (a) Ecology shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, Ecology 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, in addition to the interest charge, Ecology shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent for 90 days or more, in addition to the interest and administrative charges, Ecology shall pay 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. Ecology shall also pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate 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 will be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) 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.

CONSTRAINTS ON THE AVAILABILITY OF WATER (WATER SHORTAGES)

17. 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.

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.

ENVIRONMENTAL COMPLIANCE

18. (a) Reclamation and Ecology agree that execution of this contract will be both a federal and state action. Further, Reclamation and Ecology agree that permits between Ecology and water users will be State actions. Each agency will be responsible for its respective environmental compliance requirements.

(b) Endangered Species Act (ESA) Restrictions on Water Use: In addition to all other provisions in this contract, supplemental consultation under ESA shall be required when the following three criteria are met:

(1) Where an application for a mitigated permit for water use contains a point of diversion (POD) located on a stream reach bearing ESA-listed fish, and

(2) Where that POD cannot be mitigated from a water source above the POD, and

(3) The total diversion from the subject stream reach, including the application diversion and all other diversions on that reach, exceeds 1% of the critical low flow of that reach. The critical low flow shall be measured

pursuant to the "protocol" described in Exhibit B and measured after the execution date of this contract.

The above condition is set for the purpose of determining a threshold for supplemental ESA consultation only. Applications satisfying the stated condition are subject to further evaluation, restriction, or denial pursuant to other provisions of this contract. Nothing herein shall prevent the applications from being subject to other legal requirements of applicable law or Treaty and procedure outside of the ESA. The stated condition of the 1 % flow described in (b) above shall not be construed as a permissible or allowable limit for water use for any other requirement other than determining the threshold for further ESA consultation. This article is not binding on any parties other than the Department of Ecology and the United States Bureau of Reclamation.

SPECIAL CONDITIONS

19. (a) Nothing in this contract expands, alters or limits the property or other rights, authority, responsibilities, sovereignty, or jurisdiction of any party. Nothing herein shall act to waive, abrogate, define or diminish the Treaty rights of the Yakama Nation nor the sovereign rights of the State of Washington, the Yakama Nation or the United States.

(b) Notwithstanding any other provision of this contract, the parties acknowledge that Reclamation's actions are subject to federal reclamation law, as amended and supplemented, and the policies, rules and regulations promulgated by the Secretary of the Interior under federal reclamation law; and applicable federal law, including but not limited to, the National Environmental Policy Act (NEPA), and the ESA.

(c) Notwithstanding any other provision of this contract, the parties acknowledge that any activity executed under this contract where Project benefits are afforded

shall be subject to federal reclamation law, policies, and rules and regulations governing recovery of Project costs.

(d) Nothing in this contract is intended to create any right in any entity not a signatory to this contract nor shall any entity be considered a third party beneficiary to this contract. This contract is not intended to bind or affect any non-signatory party, and the failure of any non-signatory party to object to any provision of this contract cannot be viewed as waiving, affecting, or prejudicing any non-signatory party's rights, factual arguments, legal arguments or legal positions.

(e) This contract constitutes the entire contract between and among the parties with respect to the subject matter of this contract. Any modification of this contract must be made in writing and agreed to by all the parties.

(f) All actions called for by this contract are subject to and contingent upon the availability and allocation of future federal and state appropriations, existing and future limitations on a party's statutory authorities, and state and federal regulatory approvals, as needed.

(g) In the interests of conservation and protection of environmental resources, from time to time, but not less often than once every five (5) years, this contract shall be reviewed by Reclamation's Contracting Officer.

AMENDMENT AND SEVERABILITY

20. Ecology and Reclamation enter into and continue this contract in good faith. This contract shall be effective upon the signatures of the officials listed below. This agreement may be amended or supplemented at any time by mutual consent of the parties consistent with article

19(e). This contract is severable from any contracts or agreements that are entered into subsequent to this contract unless explicitly stated otherwise.

TERMINATION OF CONTRACT

21. (a) This contract shall 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: 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) Ecology shall have the right to terminate this contract for any reason: Provided, further, that termination under this provision shall become effective no sooner than April 1 of the next calendar year following written notice.

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

(d) In the event of termination, Ecology agrees that all permits to Project storage facilities shall be terminated.

DISCLAIMER

22. No provision of this contract or the storage or delivery of water hereunder shall confer on Ecology a permanent water right to store water. Further, Reclamation shall not be liable for any acts or omissions of Ecology's employees or agents or of persons to whom water is furnished by Ecology.

NOTICES

23. 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 Program Manager, Repayment and Acreage Limitation, Pacific Northwest Region, Bureau of Reclamation, 1150 N. Curtis Road, Suite 100, Boise, Idaho 83706-1234, or to the Field Manager, Yakima Project, 1917 Marsh Rd. Yakima, WA. 98942, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Water Resources Program Section Manager, Central Regional Office, 15 W. Yakima Ave, Suite 200, Yakima, WA 98902. The designation of the addressee or the address may be changed by notice given consistent with Article 23.

GENERAL PROVISIONS

24. The general provisions applicable to this contract are listed below. The full text of these general provisions is attached as Exhibit C and is hereby incorporated by reference and made a part of this contract.

a. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

b. GENERAL OBLIGATION -- BENEFITS CONDITIONED UPON PAYMENT

c. CONFIRMATION OF CONTRACT

d. CHANGES IN CONTRACTOR'S ORGANIZATION

e. PROTECTION OF WATER AND AIR QUALITY

f. WATER CONSERVATION

g. EQUAL EMPLOYMENT OPPORTUNITY

h. RULES, REGULATIONS, AND DETERMINATIONS

i. ASSIGNMENT LIMITED -- SUCCESSORS AND ASSIGNS OBLIGATED

j. OFFICIALS NOT TO BENEFIT

k. BOOKS, RECORDS, AND REPORTS

l. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

m. CONTRACT DRAFTING CONSIDERATIONS

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

STATE OF WASHINGTON

By: _____
Director
Department of Ecology,
State of Washington

UNITED STATES OF AMERICA

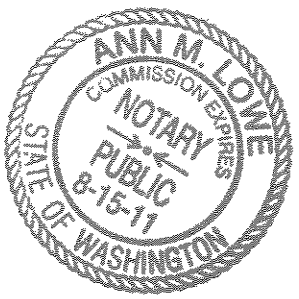
By: _____
Acting for
Regional Director
Pacific Northwest Region
Bureau of Reclamation
1150 N. Curtis Road, Suite 100
Boise, ID 83706-1234

STATE OF WASHINGTON)
: ss
County of Thurston)

On this 16 day of January, 2009, personally appeared before me Jay J. Manning, to me known to be the official of the STATE OF WASHINGTON 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 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.

(SEAL)



Ann M. Lowe
Notary Public in and for the
State of Washington
Residing at: Olympia, WA
My commission expires: 8-15-2011

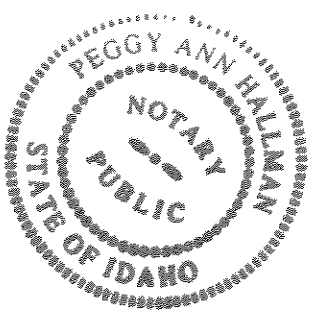
****

STATE OF IDAHO)
: ss
County of Ada)

On this 29th day of January 2009, personally appeared before me Timothy L. Personius, to me known 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.

(SEAL)



Peggy Ann Hallman
Notary Public in and for the
State of Idaho
Residing at: USBR
My commission expires: April 8, 2011

EXHIBIT A

ACQUISITION, EXCHANGE AND STORAGE PROCESS

Where there is inconsistency between the Agreement and Exhibit A, the Agreement will take priority.

1. Ecology identifies the type and location of participants (existing Post-1905 domestic and municipal water users, certain transferred senior water rights requiring mitigation, or new domestic and municipal uses needing mitigation) and quantifies their water demand;
2. Ecology identifies senior water rights to be acquired for mitigation;
3. If the senior right is to be acquired from an individual or entity, Ecology negotiates the conditions of the trust water right prior to placement of the water right into the Trust Water Program (TWP);
4. Ecology issues appropriate instruments associated with the trust water right and accepts the water right or rights into the TWP.
5. Ecology assigns a trust water right in an amount equal to the volume of storage necessary to offset the potential effect of a permit on Reclamation storage facilities.
6. Ecology may then issue a permit to the designated water user as a state action.
7. Reclamation stores and makes water available to Ecology for permits issued by Ecology to the water users. Reclamation is not a party to, nor bound by, permits issued by Ecology under this contract.

   a. Ecology will not assign trust water rights to Reclamation if to do so would cause detriment or injury to existing water rights or would be otherwise inconsistent with this contract or applicable law.

   b. Reclamation will not accept assignment of an interest in any trust water rights that has the effect of increasing the consumptive use of any water right or impairing or reducing the Total Water Supply Available (TWSA) including storage, or undertaking or approving any other action that will have a localized impact on streams or river reaches, including impairing the Yakama Nation's instream water right, even if such action does not otherwise increase consumptive use of water or reduce TWSA.

   c. Ecology will present each acquisition and permit to the WTWG for all water rights transferred or changed under this contract and subsequent contracts or agreements.

   d. The acceptance of any water right in to the TWRP or into storage is not an admission by Reclamation or Ecology of the validity of that water right or a waiver of any legal rights or process relating to that water right.

   e. All other provisions of this contract and other Exhibits are incorporated by reference into Exhibit A.

Exhibit B

PROTOCOLS FOR COMPLIANCE WITH CONTRACT PROVISION - ESA

1. Ecology will apply the critical low-flow period determined in the ESA consultation, and determine if additional consultation is necessary, through the following process:

a. Ecology will evaluate the impact of the individual diversion or withdrawal relative to the limitation specified in this Long Term Storage and Exchange contract for the flow impact at the proposed point of diversion and its relationship to streams bearing ESA listed species. Similarly, Ecology will evaluate the cumulative impacts of all diversions within a sub-basin above a stream bearing ESA listed species. The lower boundary of a sub-basin for the purposes of this analysis extends down-basin to a Reclamation storage facility or to a stream that carries Project water.

b. Ecology will evaluate each application for its existing and/or prospective use(s) and will determine based on best available information the consumptive and nonconsumptive fractions of the total amount diverted or withdrawn.

c. Ecology will estimate stream discharge during the critical low-flow period as part of the field investigation for each application using generally accepted hydrologic methods. Ecology will collect stream flow data at the point of diversion from the source of supply and, where the source itself is not an ESA listed fish bearing stream, at the location downstream within the range of the ESA listed species of concern. Stream discharge estimates may also be supplemented with data describing local climate, consultation with local water experts, and watershed runoff models.

d. Where Ecology determines that the application does not require additional ESA consultation as described in Article 18(b) of the contract, Ecology will continue to process the application in accordance with all other provisions of the contract. Where Ecology determines that the application will require additional ESA consultation, to be included under this contract, Ecology may continue to process the application in accordance with all other provisions of the contract so as to determine whether supplemental ESA consultation is warranted or reject the application. This determination will be made by Ecology after review by Reclamation and the WTWG.

EXHIBIT C

GENERAL PROVISIONS --- YAKIMA RIVER BASIN PROJECT

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

a. 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 Ecology 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

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

(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 Ecology through Yakima project facilities during any period in which Ecology is in arrears in the advance payment of water rates due the United States. Ecology shall not deliver water under the terms and conditions of this contract for lands or parties that are in arrears in the advance payment of water rates as levied or established by Ecology.

CONFIRMATION OF CONTRACT

c. Ecology, after the execution of this contract, shall furnish to the Contracting Officer evidence that pursuant to the laws of the State of Washington, Ecology is a legally constituted entity and the contract is lawful, valid, and binding on Ecology. 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

d. While this contract is in effect, no change may be made in Ecology's organization which may affect the respective rights, obligations, privileges, and duties of either the United States or Ecology 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

e. (1) Project facilities used to make available and deliver water to Ecology 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 Ecology and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to Ecology.

(2) Ecology 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 delivery of water by Ecology; 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 Ecology facilities.

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

WATER CONSERVATION

f. Prior to delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this contract, Ecology 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

g. During the performance of this contract, Ecology agrees as follows:

(1) Ecology will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. Ecology 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. Ecology 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) Ecology will, in all solicitations or advertisements for employees placed by or on behalf of Ecology, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.

(3) Ecology 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 Ecology'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) Ecology 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) Ecology 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 Ecology'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 Ecology 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) Ecology 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. Ecology 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 Ecology becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Ecology may request the United States to enter into such litigation to protect the interests of the United States.

RULES, REGULATIONS, AND DETERMINATIONS

h. (1) The parties agree that the delivery 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 Ecology.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

i. 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

j. No Member of or Delegate to the Congress, Resident Commissioner, or official of Ecology 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

k. Ecology shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including Ecology'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

l. (1) Ecology 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, Ecology 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) Ecology 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 Ecology 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. Ecology 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 Ecology shall be investigated by the Contracting Officer's Office of Civil Rights.

CONTRACT DRAFTING CONSIDERATIONS

m. Articles 1 through 24 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.