

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF RECLAMATION

ANIMAS-LA PLATA PROJECT
 COLORADO RIVER STORAGE PROJECT

FUNDING AGREEMENT AND REPAYMENT CONTRACT
 BETWEEN THE UNITED STATES AND THE
 COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY

INDEX

Article Number	Article	Page
	Explanatory Recitals	1
1	General Definitions	2
2	Project Works	5
3	Conditions Precedent to Construction	6
4	Project Coordination Committees	6
5	Measurement and Responsibility for Distribution of Water	7
6	Allocation and Use of Project Water	8
7	Water Right Provisions	9
8	Method of Payment for Project Construction Costs	9
9	Method for Establishing Blocks for Project Delivery and Repayment	12
10	Payment of Operation, Maintenance, and Replacement Costs	13
11	Use and Disposal of Project Water During Construction	13
12	Water Shortages	14
13	Covenant Against Contingent Fees	14
14	Third Party Contracts	14
15	Title to Project Works	15
16	Severability	15

INDEX

Article Number	Article	Page
-------------------	---------	------

STANDARD ARTICLES

17	Charges for Delinquent Payments	15
18	General Obligation - Benefits Conditioned Upon Payment	16
19	Notices	16
20	Contingent on Appropriation or Allotment of Funds	16
21	Officials Not to Benefit	16
22	Changes in Authority's Organization	16
23	Assignment Limited - Successors and Assigns Obligated	17
24	Books, Records, and Reports	17
25	Rules, Regulations, and Determinations	17
26	Quality of Water	17
27	Water and Air Pollution Control	17
28	Water Conservation	17
29	Equal Opportunity	18
30	Compliance with Civil Rights Laws and Regulations	18
	Signature Blocks	19

1
2
3
4 UNITED STATES
5 DEPARTMENT OF THE INTERIOR
6 BUREAU OF RECLAMATION
7

8 ANIMAS-LA PLATA PROJECT
9 COLORADO RIVER STORAGE PROJECT
10

11 FUNDING AGREEMENT AND REPAYMENT CONTRACT
12 BETWEEN THE UNITED STATES AND THE
13 COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY
14

15 THIS CONTRACT, made this 9th day of November, 2001, pursuant to the Act of
16 Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary
17 thereto, all of which acts are commonly known and referred to as the Federal Reclamation Laws,
18 between the UNITED STATES OF AMERICA, hereinafter referred to as the United States,
19 represented by the officer executing this contract, and the COLORADO WATER RESOURCES
20 AND POWER DEVELOPMENT AUTHORITY, a political subdivision of the State of
21 Colorado, hereinafter called the Authority, located in Denver, Colorado.

22 WITNESSETH, That:

23 WHEREAS, the following statements are made in explanation:

24 (a) The Act of Congress approved April 11, 1956 (70 Stat. 105), authorized the
25 planning and investigation of the Animas-La Plata Project as a participating project of the
26 Colorado River Storage Project; subsequently, the construction, operation, and maintenance of
27 the Animas-La Plata Project was authorized by Title V of the Colorado River Basin Project Act
28 of September 30, 1968 (82 Stat. 896), and the United States has investigated, planned, and
29 proposes to construct said Animas-La Plata Project for the storage, diversion, salvage, and
30 distribution of the waters of the Animas River, which Project has among its authorized purposes
31 the furnishing of water for municipal, industrial, domestic, and other beneficial purposes. The
32 water rights settlement purposes of the Project were authorized by the Colorado Ute Indian Water
33 Rights Settlement Act of 1988 (Public Law 100-585) as amended by the Colorado Ute
34 Settlement Act Amendments of 2000 (2000 Amendments), Public Law (P.L.) 106-554.

35 (b) The 2000 Amendments authorize the construction of a reservoir, pumping plant,
36 inlet conduit, and appurtenant facilities with sufficient capacity to divert and store water from the

1 Animas River for an average annual depletion of 57,100 acre feet of water to be used for a
2 municipal and industrial water supply;

3 (c) Reclamation has completed the Animas-La Plata Final Supplemental Environmental
4 Impact Statement (FSEIS) dated July 2000 and subsequent Record of Decision dated September
5 25, 2000, for compliance with the National Environmental Policy Act.

6 (d) As provided by Public Law 100-585, the design and construction functions of the
7 Bureau of Reclamation with respect to the Animas-La Plata Project shall be subject to the
8 provisions of the Indian Self-Determination and Education Assistance Act (Public Law 93-638)
9 to the same extent as if such functions were performed by the Bureau of Indian Affairs.

10 (e) Adequate water rights for the Project have been obtained in Colorado and New
11 Mexico, and the United States is satisfied that any conflicts between private water rights and
12 Project water rights have been resolved.

13 (f) The Authority is interested in contracting for the water supply allocated to the
14 Animas-La Plata Water Conservancy District in Public Law 106-554.

15 (g) The parties hereto desire to enter into this contract in order to secure this municipal
16 and industrial water supply pursuant to the terms and conditions of Public Law 106-554 for the
17 use of such water in Colorado as hereinafter provided.

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

20
21 GENERAL DEFINITIONS

22 1. Where used in this contract:

23 (a) "United States" or "Contracting Officer" or "Secretary" or any of them means the
24 Secretary of the United States Department of the Interior or his/her duly authorized
25 representative.

26 (b) "Authority" means the Colorado Water Resources and Power Development
27 Authority, a political subdivision of the State of Colorado, located in Denver, Colorado, or its
28 assignees.

29 (c) "Project" means the Animas-La Plata Project, a participating Project of the
30 Colorado River Storage Project, as modified by Public Law 106-554.

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

(d) "Project Operator" means either the United States or the entity operating the Project Works.

(e) "Project Works" means all works or facilities as described in Public Law 106-554, including a reservoir, a pumping plant, a reservoir inlet conduit, and appurtenant facilities with sufficient capacity to divert and store water from the Animas River for an average annual depletion of 57,100 acre-feet of water to be used for a municipal and industrial water supply, to be constructed under the Project, together with lands and rights-of-way for such works, as described in Article 2 herein.

(f) "Appurtenant Facilities" includes, but is not limited to, transmission lines, roads, buildings, and other facilities related to the following Project Works to be constructed as a part of the Project.

(g) "Project Water" means all water made available as a result of the Project, or from, through, or by means of Project Works, and consists of water provided by direct diversion and releases from project storage.

(h) "Project Storage Water" means Project Water provided from storage in Ridges Basin Reservoir, the storage component of the Project.

(i) "Cost Sharing Agreement" refers to the "Agreement in Principle Concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas-La Plata Project Cost Sharing" dated June 30, 1986, between the United States, the State of Colorado, certain political subdivisions of the States of Colorado and New Mexico, the Ute Mountain Ute Tribe, and the Southern Ute Indian Tribe, as amended contemporaneously herewith, which is attached as **Exhibit A**.

(j) "Water Rights Settlement Agreement" refers to the "Colorado Ute Indian Water Rights Final Settlement Agreement" dated December 10, 1986 among the United States, the State of Colorado, the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, and the additional governmental and private entities signatory thereto, as implemented by Public Law 100-585 as amended by Public Law 106-554.

(k) "Consultation" means the United States shall notify and confer with the Authority regarding significant decisions pertaining to this contract. In the event that consensus

1 cannot be reached and the United States makes a decision, appeals are available to the extent
2 allowed under applicable laws.

3 (l) "Operation and Maintenance Facilities" means those facilities necessary to
4 support operations and maintenance work, for example operation and maintenance headquarters,
5 office space, shops for repair of equipment, storage places for supplies, and equipment yards.

6 (m) "Payment Obligation" means the total water capital payment obligation of the
7 Authority in order to receive the municipal and industrial water supply allocated to the Animas-
8 La Plata Water Conservancy District by Public Law 106-554. The Payment Obligation shall be
9 satisfied as set forth in Article 8 hereof. The Payment Obligation comprises:

10 (1) the Up-front Payment as described in Article 8(a) herein; and

11 (2) the Additional Repayment Obligation as described in Article 8(b) herein.

12 (n) "Interest During Construction" means the interest charged for the construction
13 period on the Additional Repayment Obligation, which shall be at the rate determined by the
14 Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated,
15 on the basis of the computed average interest rate payable by the Treasury upon its outstanding
16 marketable public obligations, which are neither due nor callable for redemption for fifteen years
17 from the date of issue, as specified under Section 5(f) of the Colorado River Storage Act of April
18 11, 1956.

19 (o) "Amortization Interest" means the interest charged on the outstanding balance of
20 the Additional Repayment Obligation during the relevant repayment period, which shall be at the
21 rate determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which
22 construction is initiated, on the basis of the computed average interest rate payable by the
23 Treasury upon its outstanding marketable public obligations, which are neither due nor callable
24 for redemption for fifteen years from the date of issue, as specified under Section 5(f) of the
25 Colorado River Storage Act of April 11, 1956.

26 (p) "Relinquished Water" means that portion of Project Storage Water, along with a
27 proportionate share of the project depletion allowance, available to the Secretary for allocation to
28 other Project purposes if the Authority elects not to enter into a new agreement or does not make
29 the Additional Repayment Obligation component of its Payment Obligation established in the
30 final cost allocation as provided in Section 302(a)(3)(B) of Public Law 106-554.

1 PROJECT WORKS

2 2. Subject to the terms and conditions of this and other applicable contracts related to this
3 Project, the United States will construct the following Project Works and Appurtenant Facilities,
4 acquire lands, and provide certain moveable property and equipment to the Project Operator
5 needed for Project operation and maintenance as, in the opinion of the United States in
6 consultation with the Project Operations Committee, are necessary for Project purposes, without
7 being limited by enumeration and within the limit of funds available by the Congress and the
8 contracting parties.

9 (a) The Project Works are presently identified as the following:

10 (1) Ridges Basin Dam and Reservoir and Appurtenant Facilities, the main storage
11 facility for the Project, will be located on Basin Creek in Ridges Basin approximately 3 miles
12 southwest of Durango, Colorado. The reservoir will have a capacity of approximately 120,000
13 acre-feet.

14 (2) Durango Pumping Plant and Appurtenant Facilities will be located adjacent to
15 the Animas River and will pump Project Water from the Animas River for storage in Ridges
16 Basin Reservoir.

17 (3) Ridges Basin Inlet Conduit and Appurtenant Facilities will extend from the
18 Durango Pumping Plant to Ridges Basin Reservoir.

19 (4) Operation and Maintenance Facilities will be constructed as determined
20 necessary by the United States, after consultation with the Project Construction Coordinating
21 Committee and the Project Operations Committee, for the required operation and maintenance of
22 Project Works.

23 (b) The United States, after consultation with the Authority, shall have the right at
24 any time to increase the capacity of the Project Works or any unit or feature thereof for other than
25 current Project purposes without additional capital or operation and maintenance cost to the
26 Authority; Provided, that the Authority's use of Project Water shall not be impaired thereby. The
27 right of use of such increased capacity is reserved to the United States.

28 (c) Any additions, changes to, or operation of Project Works or changes in use of
29 water from that stated in the Animas-La Plata Final Supplemental Environmental Impact
30 Statement (FSEIS) dated July 2000 and subsequent Record of Decision dated September 25,

1 2000, will be subject to further compliance with applicable environmental statutes and must be
2 approved by the Secretary of the Interior.

3 (d) Construction and operation of the Project will be in accordance with the
4 Environmental Commitments in Chapters 4 and 5 of the FSEIS, which are attached as **Exhibit B**
5 to this contract.

6
7 CONDITIONS PRECEDENT TO CONSTRUCTION

8 3. The United States shall be under no obligation to commence, or having commenced,
9 to continue construction of Project Works necessary for the delivery of Project Water under this
10 contract until:

11 (a) Any non-Tribal entity that desires to pay its capital obligations for its municipal
12 and industrial water prior to construction pursuant to Public Law 106-554 has had an opportunity
13 to enter into such an agreement with the United States prior to the initiation of construction.

14 (b) The United States, before initiation of construction of any Project Works, has
15 notified the Authority in writing of any other agreements or conditions precedent that must be
16 met prior to the construction of those Project Works; Provided, however, that no such conditions
17 precedent shall be imposed unless such conditions precedent are mandated or required by Federal
18 laws, State law, or policy promulgated pursuant thereto.

19
20 PROJECT COORDINATION COMMITTEES

21 4. Coordination of Project construction, operations, and Project Works maintenance
22 activities will be accomplished through the establishment of two committees: one to focus on
23 those activities associated with the construction of the Project Works, the other to oversee the
24 operations and maintenance activities.

25 (a) The Project Construction Coordination Committee will be made up of
26 representatives of those entities that have been identified by the 2000 Amendments to receive
27 Project Water, the Bureau of Reclamation and a representative of the Authority. This committee
28 will provide coordination and consultation on the construction activities among all the project
29 beneficiaries, seeking common understanding and consensus on decisions associated with such
30 items as final plans for Project Works, project construction completion schedule, and Project

1 construction costs. Upon Project completion, this committee will be dissolved.

2 (b) The Project Operations Committee will initially consist of representatives from
3 those entities that have been identified by the 2000 Amendments to receive Project Water, the
4 Bureau of Reclamation, and a representative of the Authority. Initially, this committee will
5 determine the appropriate entity to contract with Reclamation for the operation and maintenance
6 of the Project Works and the development of a common understanding among the project
7 beneficiaries of the appropriate level of annual operation, maintenance, and replacement
8 (OM&R) activities to be performed on the Project Works to assure the Project's long term
9 operational integrity and public safety. Ultimately, this committee will oversee the ongoing
10 operations, maintenance, and replacement activities of the Project Works, providing consultation
11 and coordination among the committee members on such items as annual OM&R funding,
12 maintenance schedules, and public safety issues.

13
14 MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

15 5. (a) Water delivered to the Authority pursuant to this contract shall be measured at the
16 outlet works of Ridges Basin Dam and/or in the Animas River at the Durango Pumping Plant
17 with measuring facilities installed by the United States as a part of the Project. Water delivered
18 to the Authority pursuant to this contract directly out of the reservoir shall be measured by
19 facilities provided by the Authority or its subcontractors. Water delivered to the Authority's
20 subcontractors pursuant to this contract shall be measured by the users at their points of
21 diversion. Sufficient water will be available for diversion at any approved points of diversion on
22 the Animas River, at the dam outlet, or in the reservoir in such proportions as the Authority
23 determines from time to time, subject to capacity limitations of the relevant facilities, to ensure
24 that the Authority annually receives a municipal and industrial water allocation with an average
25 annual depletion not to exceed 2,600 acre-feet.

26 (b) The United States will not be responsible for the control, carriage, handling, use,
27 disposal, or distribution of water furnished the Authority from the reservoir, the outlet works of
28 Ridges Basin Dam, or bypassed at the Durango Pumping Plant to the place of final use. The
29 Authority will hold the United States harmless on account of damage or claim of damage of any
30 nature whatsoever arising out of or connected with the control, carriage, handling, treatment, use,
31 disposal, or distribution of water by the Authority below the Project points of measurement.

1 (c) All facilities required for taking water furnished under this contract from the
2 points of delivery and putting it to use by the Authority and its subcontractors will be acquired,
3 constructed or installed, and operated and maintained by the Authority at their sole expense.
4

5 ALLOCATION AND USE OF PROJECT WATER

6 6. (a) The Authority's allocation of water provided by the Project consists of a municipal
7 and industrial water allocation with an average annual depletion not to exceed 2,600 acre-feet,
8 except as otherwise provided under Subarticle 8(b)(2)(iii) herein. This allocation may be met by
9 a combination of direct diversion of the natural flows from the Animas River and water released
10 from Project storage and diverted from the Animas River.

11 (b) Except as provided in Subarticle 8(b)(2)(iii) herein, the Authority shall have the
12 right to utilize storage space in Ridges Basin Reservoir in the amount of 2,919 acre-feet to
13 supplement direct flow diversion amounts necessary to fulfill the Authority's annual Project
14 Water allocation. Any unused water remaining in this Project storage space shall be retained in
15 Ridges Basin Reservoir and shall be available for the Authority's use in succeeding years. The
16 Authority shall have the opportunity to purchase excess Project Water stored in Ridges Basin
17 Reservoir from other users.

18 (c) If required to ensure that the average annual depletion allocation of 2,600 acre-
19 feet is met, the water may be used and reused to the extent permitted by the Project decrees. In
20 addition, the water may be used at any location in the Project service area, and may be used by
21 exchange or augmentation to achieve the municipal and industrial uses permitted.

22 (d) The United States, after compliance with applicable environmental compliance
23 statutes, shall cooperate with the Authority, its subcontractors or assignees to provide appropriate
24 interests in land needed for delivery of Project Water through non-project facilities.

25 (e) Any use of Project Water other than that contemplated in the July 2000 Final
26 Supplemental Environmental Impact Statement and subsequent Record of Decision dated
27 September 25, 2000 for the Animas-La Plata Project shall be subject to compliance with
28 applicable environmental statutes.
29
30

1 WATER RIGHT PROVISIONS

2 7. (a) Upon request of the United States, the Authority will assign the water rights, if any,
3 that it holds associated with the Project water rights to the United States for the benefit of users of
4 Project Water. The Authority, or its assignee, will also protect its interest in the Project water
5 rights and in case a dispute arises as to the character, extent, priority or validity of the rights of the
6 United States or the Authority to use or permit use of Project Water, the Authority shall promptly
7 bring and diligently prosecute and/or defend judicial proceedings for the determination of such
8 dispute and shall take all other measures necessary toward the defense and protection of the
9 Project water supply. If the Authority does not defend Project water rights for the protection of
10 the Project water supply to the satisfaction of the United States, the United States, upon 30 days
11 prior written notice to the Authority, itself will enter into the proceedings to defend such rights.

12 (b) The construction of the Project Works, the allocation of the water supply from
13 those facilities to the Colorado Ute Tribes, and the provision of funds to the Colorado Ute Tribes
14 in accordance with section 16 of Public Law 106-554, and the issuance of an amended final
15 consent decree by the State of Colorado as contemplated in subsection 18(c) of Public Law 106-
16 554 shall constitute final settlement of the tribal claims to water rights on the Animas and La Plata
17 Rivers in the State of Colorado.

18 METHOD OF PAYMENT FOR PROJECT CONSTRUCTION COSTS

19 8. The Authority's Payment Obligation consists of the Up-front Payment Obligation,
20 which may, pursuant to Section 302(a)(3)(A) of Public Law 106-554, be satisfied by payment in
21 full of the Authority's water capital obligation prior to the initiation of construction, and of any
22 Additional Repayment Obligation, which may, pursuant to Section 302(a)(3)(B) be warranted
23 upon final cost allocation upon completion of construction for reasonable and unforeseen costs
24 associated with Project construction, as determined by the Secretary in consultation with the
25 relevant repayment entities.

26 (a) Up-front Payment Obligation. The Authority shall enter into the Amended and
27 Restated Escrow Agreement and the Amended and Restated Escrow Agreement and Instructions
28 attached hereto as **Exhibits C and D** contemporaneously herewith, and establish the Escrow
29 Account contemplated by those agreements. The initial sum escrowed, \$7,256,750, is derived
30

1 from the May 2001 Interim Cost Allocation based on October 2001 price levels. The initial sum
2 escrowed and the interest and investment income on that sum during the time of escrow, up to 3%
3 per year, shall be expended as set forth in the Amended and Restated Escrow Agreement and
4 Instructions attached hereto as **Exhibit D** to pay: (1) the Authority's share of costs incurred on the
5 Project prior to October 1, 1999 (Sunk Costs) totaling \$1,161,088; (2) the Authority's 3.07%
6 share of Joint Project Costs; (3) the Authority's share, up to \$582,400, of items provided solely
7 for the benefit of the Authority and its subcontractors (Specific Costs); and (4) inflationary
8 increases in the cost of construction during the period of construction, currently estimated at 3%
9 per year, which inflationary increases are anticipated to be met by the interest and investment
10 income on the Escrow Account. Establishment of the Escrow Agreement as set forth above shall
11 constitute payment in full prior to initiation of construction of the Authority's water capital
12 obligation as mandated by Section 302(a)(3)(A) of Public Law 106-554.

13 (b) Additional Repayment Obligation.

14 (1) Determination of Additional Repayment Obligation. Upon completion of
15 Project construction, the Secretary, in consultation with the Authority and other relevant
16 repayment entities, shall prepare a final cost allocation pursuant to Section 302(a)(3)(B) of Public
17 Law 106-554 and determine whether reasonable and unforeseen costs associated with Project
18 construction warrant additional repayment by the Authority. If additional repayment is so
19 warranted, then the Authority's share of such additional repayment shall be determined based
20 upon its share of Project Storage Water and overall reimbursable costs, with such share not to
21 exceed 3.07% of the Joint Project Costs in excess of \$217,287,950 that are reasonable and
22 unforeseen and 100% of the Specific Costs that exceed \$582,400 that are reasonable and
23 unforeseen, and such share shall constitute the Authority's Additional Repayment Obligation.

24 (2) Satisfaction of Additional Repayment Obligation.

25 (i) Lump Sum Payment. The Authority may, at its option, pay any
26 Additional Repayment Obligation, together with applicable Interest During Construction charges,
27 in a lump sum within 60 days of the determination of the Additional Repayment Obligation. Such
28 payment may be made from funds accrued in and not otherwise expended from the Escrow
29 Account or from other funds of the Authority.

1 (ii) Payment Over Time. If the Authority elects not to make a lump sum
2 payment of any Additional Repayment Obligation, then the United States will attribute and assign
3 the Additional Repayment Obligation to a pro-rata share of the Authority's total Project Water,
4 and will include in the block notice for such pro-rata share of the water supply the information
5 regarding the Additional Repayment Obligation set forth in Article 9 below. Upon receipt of such
6 block notice, the Authority may:

7 1. Pursuant to Section 9(c)(1) of the Reclamation Projects Act of
8 1939, elect to enter into a new agreement for payment of the Additional Repayment Obligation
9 assigned to the block notice, which new agreement may provide for (a) payment of the Additional
10 Repayment Obligation assigned to the relevant block notice (together with Interest During
11 Construction charges and Amortization Interest charges) over a 25 year repayment period in
12 annual installments due on or before January 10 of each year; provided, however, that if the
13 Authority or its subcontractor for the relevant water supply commits to the measures in its water
14 conservation plan described in Article 28 below, then repayment may be completed over a 40 year
15 period;

16 2. Pursuant to the provisions of the Water Supply Act of 1958 (72
17 Stat. 297), as amended, elect to defer payment of the Additional Repayment Obligation and use of
18 the pro-rata water supply assigned to the Additional Repayment Obligation in which case (a) no
19 principal or interest payments need be made with respect to storage of water for future water
20 supply as provided by the Water Supply Act of 1958 until such supply is first used, but such
21 deferral of repayment shall not exceed ten (10) years; (b) no interest shall be charged on such
22 cost until such supply is first used, but in no case shall the interest-free period exceed ten (10)
23 years; and (c) once repayment is initiated, the Additional Repayment Obligation, together with
24 Interest During Construction and Amortization Interest shall be paid in annual installments over
25 the remainder of the repayment period, provided, however, that the repayment period, including
26 deferral, shall not exceed 50 years.

27 (iii) Relinquishment. Alternatively, the Authority may elect, at its option,
28 not to pay the Additional Repayment Obligation, and thereby relinquish any use or contract right
29 to the Project Water assigned to the Additional Repayment Obligation. The resulting
30 Relinquished Water shall be available to the Secretary for allocation to other purposes as provided

1 by Section 302(a)(3)(B) of Public Law 106-554.

2 (c) Other Provisions.

3 (1) Consultation. Upon request, the United States will consult annually with the
4 Authority concerning the allocation of construction costs and of any Interest During Construction
5 Cost to be payable under this Contract. The Use-of-Facilities method of cost allocation is based
6 on the storage space required in Ridges Basin Reservoir necessary to meet water delivery
7 requirements of the beneficiaries. This Use-of-Facilities method will be used to allocate costs for
8 the Project, and will not be changed during the administration of this Contract.

9 (2) Continuing Effect. In accordance with Section 9(c)(1) of the Reclamation
10 Projects Act of 1939, following payment of the Payment Obligation herein, the other contract
11 terms shall remain in full force and effect until mutually agreed by the Authority and the United
12 States.

13
14 METHOD FOR ESTABLISHING BLOCKS FOR PROJECT DELIVERY AND REPAYMENT

15 9. (a) When the Project Works defined in Article 2(a) are completed, tested, and the
16 Project Storage Water becomes available for use by the Authority, the United States shall, after
17 consultation, give the Authority written notice, referred to herein as the "block notice," at least 12
18 months prior to the date when water will be first delivered to the affected block. The block notice
19 shall contain:

20 (1) A description of the entities included in the block.

21 (2) The quantity of Project Water available to the Authority for the block.

22 (b) If an Additional Repayment Obligation has been assigned pro rata to a quantity of
23 the Authority's Project Storage Water, pursuant to Article 8(b)(2)(ii) herein, then the block notice
24 establishing the availability of that water supply will also set forth:

25 (1) The Additional Repayment Obligation allocated to that block; and

26 (2) The payment schedule for the Additional Repayment Obligation allocated to
27 that block, as established by the new agreement for payment of the additional repayment
28 obligation entered into pursuant to Article 8(b)(2)(ii) including a breakdown of the amount and
29 due date of each payment.

30 (c) Each block notice and amendment thereto shall become a part of this contract.

1
2 PAYMENT OF OPERATION, MAINTENANCE, AND REPLACEMENT COSTS

3 10. (a) The operation, maintenance, and replacement (OM&R) costs allocated to the
4 Authority's Project Water will comprise: (1) the Authority's pro-rata share of OM&R costs
5 actually incurred by the Project Operator in connection with Project facilities and/or operations that
6 benefit all users of Project Water (General OM&R Costs), based on the amount of Project Storage
7 Water actually purchased and paid for by the Authority in accordance with article 8 above; (2) the
8 Authority's pro-rata share of OM&R costs actually incurred by the Project Operator in connection
9 with Project facilities and/or operations that benefit the Authority (and/or its subcontractors), but
10 do not benefit all other users of Project Water (Specific OM&R Costs), based on the Authority's
11 pro-rata use of such facilities; and (3) the actual cost required to refill Project storage to replace
12 water released by request of the Authority.

13 (b) Payment of the Authority's, or its assignee's, allocated OM&R costs shall be made
14 annually in advance, within 60 days of receipt of the annual charge notice issued by the Project
15 Operator based on the Project Operations Committee's annual estimate of Project OM&R costs. If
16 the Authority's allocated OM&R costs exceed the sum paid in advance, then a supplemental charge
17 notice will be issued and the Authority will pay the sum required within 60 days of receipt. If the
18 Authority's allocated OM&R costs are less than the sum advanced, then the Authority shall receive
19 a credit for the overpayment upon its next charge notice.

20
21 USE AND DISPOSAL OF PROJECT WATER DURING CONSTRUCTION

22 11. During construction, Project Water that is not made available to the Authority under a
23 block notice as provided in Article 9 herein, may be disposed of by the United States at terms and
24 charges fixed by the United States. The charges shall be sufficient to at least cover the operation,
25 maintenance, and replacement costs appropriate for such water delivery. Payment for use of such
26 water shall be in advance and the proceeds shall be applied to operation and maintenance expense
27 and other appropriate accounts as determined by the United States, and shall accrue to the benefit
28 of the United States. The Authority shall, however, have the first opportunity to purchase said
29 Project Water at the price and terms offered.

1 WATER SHORTAGES

2 12. There may occur at times during any year a shortage in the quantity of water available
3 for furnishing to the Authority through and by means of the Project, but in no event shall any
4 liability accrue against the United States or any of its officers, agents, or employees for any
5 damage, direct or indirect, arising from a shortage, on account of errors in operation, drought, or
6 any other causes. In any year in which there may occur a shortage from any cause, the United
7 States reserves the right to apportion the available water supply, exclusive of carryover storage,
8 among the Authority, Tribes, and others entitled to receive water from the Project in accordance
9 with conclusive determinations of the Contracting Officer, and in accordance with applicable law,
10 including the Animas-La Plata Compact.

11
12 COVENANT AGAINST CONTINGENT FEES

13 13. The Authority warrants that it has not employed or retained any person or selling
14 agency to solicit or secure this contract upon an agreement or understanding for a commission,
15 percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established
16 commercial or selling agencies maintained by the Authority for the purpose of securing business.
17 For breach or violation of this warranty, the United States shall have the right to annul this contract
18 without liability, or at its discretion, to add to the repayment obligation or consideration the full
19 amount of such commission, percentage, brokerage, or contingent fee.

20
21 THIRD PARTY CONTRACTS

22 14. (a) Any contract entered into between the Authority and any third-party for the use of
23 Project Water under this Contract shall be subject to written approval of the United States in order
24 to determine the effects on the operation of the Project Works. Any such subcontracts shall be
25 subject to the provisions of this Contract and must include, but not be limited to, terms of
26 measurement, operations, environmental compliance, and the impact of defaults on Project Works.
27 Approval shall not be unreasonably withheld. The United States shall have 60 days after
28 environmental compliance, if required, or after receipt of the proposed third-party contract to
29 inform the Authority of its approval or denial of the contract. If the United States approves an
30 assignment of all of the Authority's rights and obligations under this contract, then the Authority

1 shall be relieved of any further liability under this contract.

2 (b) The Authority shall not receive any valuable consideration for such subcontract
3 in excess of the total cumulative cost of the water to the Authority (such cost of water includes
4 interest on Authority funds used to procure such water, administrative costs, and OM&R costs).
5 The Authority shall not extract any brokerage, profits, commission or fee, from any person on the
6 water to be delivered under such subcontract. In connection with any such subcontract, the Chair
7 of the Authority, or designee, shall certify to the United States that the conveyance with respect to
8 water delivery was without consideration except as provided above, and that no brokerage, profits,
9 commission, fee, or other charge of any kind was charged to the subcontractor or any person acting
10 on behalf of the subcontractor. Any exceptions to this article will be covered under a separate
11 agreement.

12 TITLE TO PROJECT WORKS

13 15. Title to the Project Works shall be held by the United States, unless specifically
14 provided otherwise by Congress, notwithstanding transfer of the care, operation, and maintenance
15 of any said works to the Project Operator.

16 SEVERABILITY

17 16. (a) If any provisions of Articles 17 through 30 are in conflict with Article 1 through
18 16, then the provisions of Article 1 through 16 shall take precedence.

19 (b) If any provisions of the contract shall, for any reason be determined to be illegal or
20 unenforceable, the parties, nevertheless, intend that the remainder of the contract shall remain in
21 full force and effect. Furthermore, any adjustments or variations to this contract necessitated by
22 future negotiations with other Project beneficiaries can be accomplished by amending this contract.
23

24 CHARGES FOR DELINQUENT PAYMENTS

25 17. (a) The Authority shall be subject to interest, administrative and penalty charges on
26 delinquent installments or payments. When a payment is not received by the due date, the
27 Authority shall pay an interest charge for each day the payment is delinquent beyond the due date.
28 When a payment becomes 60 days delinquent, the Authority shall pay an administrative charge to
29 cover additional costs of billing and processing the delinquent payment. When a payment is
30 delinquent 90 days or more, the Authority shall pay an additional penalty charge of 6 percent per
31 year for each day the payment is delinquent beyond the due date. Further, the Authority shall pay
32 any fees incurred for debt collection services associated with a delinquent payment.
33
34
35

1 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in the
2 Federal Register by the Department of the Treasury for application to overdue payments, or the
3 interest rate of 0.5 percent per month prescribed by section 6 of the Reclamation Project Act of
4 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and
5 remain fixed for the duration of the delinquent period.

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

9 10 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

11
12 18. (a) The obligation of the Authority to pay the United States as provided in this contract
13 is a general obligation of the Authority notwithstanding the manner in which the obligation may be
14 distributed among the Authority's subcontractors and notwithstanding the default of individual
15 subcontractors in their obligations to the Authority.

16 (b) The payment of charges becoming due hereunder is a condition precedent to
17 receiving benefits under this contract. The United States shall not make water available to the
18 Authority through project facilities during any period in which the Authority may be in arrears in
19 the advance payment of any operation and maintenance charges due the United States or in arrears
20 for more than 12 months in the payment of any construction charges due the United States. The
21 Authority shall not furnish water made available pursuant to this contract for parties which are in
22 arrears in the advance payment of operation and maintenance charges or in arrears more than 12
23 months in the payment of construction charges as levied or established by the Authority.

24 25 NOTICES

26
27 19. Any notice, demand, or request authorized or required by this contract shall be deemed
28 to have been given, on behalf of the Authority, when mailed, postage prepaid, or delivered to the
29 Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, Room
30 6107, Salt Lake City, Utah 84138-1102, and on behalf of the United States, when mailed, postage
31 prepaid, or delivered to the Colorado Water Resources and Power Development Authority, 1580
32 Logan Street - Suite 620, Denver, Colorado 80203. The designation of the addressee or the address
33 may be changed by notice given in the same manner as provided in this article for other notices.

34 35 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

36
37 20. The expenditure or advance of any money or the performance of any obligation of the
38 United States under this contract shall be contingent upon appropriation or allotment of funds.
39 Absence of appropriation or allotment of funds shall not relieve the Authority from any obligations
40 under this contract. No liability shall accrue to the United States in case funds are not appropriated
41 or allotted.

42 43 OFFICIALS NOT TO BENEFIT

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

47 48 CHANGES IN AUTHORITY'S ORGANIZATION

49
50 22. While this contract is in effect, no change may be made in the Authority's organization
51 by dissolution, consolidation, merger or otherwise, except upon the Contracting Officer's written
52 consent, unless all obligations of the Authority under this contract have been satisfied, or provision
53 has been made for the satisfaction of all such obligations.

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

EQUAL OPPORTUNITY

29. During the performance of this contract, the Authority agrees as follows:

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

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

(c) The Authority 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 Authority'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.

(d) The Authority 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.

(e) The Authority 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 the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

(g) The Authority 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 said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Authority 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 Authority becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Authority may request the United States to enter into such litigation to protect the interests of the United States.

49
50
51
52
53

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

30. (a) The Authority shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) 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.

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

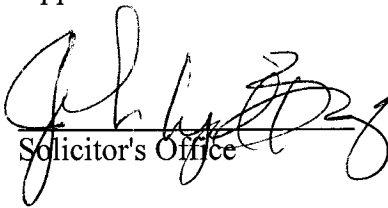
7 (c) The Authority makes this agreement in consideration of and for the purpose of
8 obtaining any and all Federal grants, loans, contracts, property discounts or other Federal financial
9 assistance extended after the date hereof to the Authority by the Bureau of Reclamation, including
10 installment payments after such date on account of arrangements for Federal financial assistance
11 which were approved before such date. The Authority recognizes and agrees that such Federal
12 assistance will be extended in reliance on the representations and agreements made in this article,
13 and that the United States reserves the right to seek judicial enforcement thereof.
14
15
16
17
18

19 IN WITNESS WHEREOF, the parties hereto have
20 caused this contract to be duly executed as of the day and year first above written.
21
22
23

24 Approved

THE UNITED STATES OF AMERICA

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

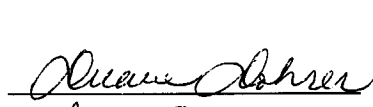


Solicitor's Office

By 
Regional Director
Upper Colorado Region
Bureau of Reclamation

ATTEST:

COLORADO WATER RESOURCES AND
POWER DEVELOPMENT AUTHORITY



ASST. SEC.

By 
Chair

List of Attachments: Exhibit A - Cost Sharing Agreement, as amended
Exhibit B - Environmental Commitments
Exhibit C - Amended and Restated Escrow Agreement
Exhibit D - Amended and Restated Escrow Agreement and Instructions.

**AMENDED AND RESTATED AGREEMENT IN PRINCIPLE
CONCERNING THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT
AND BINDING AGREEMENT FOR ANIMAS-LA PLATA COST SHARING**

Introduction

1. On June 30, 1986, the United States, the State of Colorado, the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, the Colorado Water Resources and Power Development Authority, the Animas-La Plata Water Conservancy District, the New Mexico Interstate Stream Commission, the San Juan Water Commission, and Montezuma County, Colorado, entered into the Agreement in Principle Concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas-La Plata Cost Sharing (the "1986 Agreement"). The 1986 Agreement set forth the Agreement in Principle of the United States, State of Colorado, Ute Mountain Ute Tribe, and Southern Ute Indian Tribe for settlement of the Tribes' outstanding reserved water right claims in the State of Colorado. A crucial component of the contemplated water rights settlement was the provision of water to the Tribes from the Animas-La Plata Project, a participating project of the Colorado River Storage Project Act, authorized by the Colorado River Basin Project Act, in satisfaction of the Tribes' reserved rights claims from the Animas and La Plata Rivers. As an integral part of the contemplated settlement, the 1986 Agreement also set forth the Binding Agreement of the United States, State of Colorado, Colorado Water Resources and Power Development Authority, Animas-La Plata Water Conservancy District, New Mexico Interstate Stream Commission, San Juan Water Commission, Montezuma County, Colorado, Ute Mountain Ute Tribe, and Southern Ute Indian Tribes, for cost sharing and financing of the Animas-La Plata Project.

2. The 1986 Agreement contemplated a final water rights settlement that would provide for: (1) a consent decree quantifying the Tribes' reserved rights that would be contingent upon adoption of specified legislation, including legislation approving the construction of and provision of water supply to the Tribes from the Animas-La Plata Project; (2) establishment and funding of certain tribal development funds; and (3) appropriate finality provisions. Pursuant to the 1986 Agreement, on December 10, 1986, the United States, State of Colorado, Ute Mountain Ute and Southern Ute Indian Tribes, and participating private and governmental entities within the State of Colorado entered into the Colorado Ute Indian Water Rights Final Settlement Agreement (the "Final Settlement Agreement"). The Final Settlement Agreement quantified the entitlements of the Tribes to reserved water rights in the State of Colorado and provided for administration of those reserved rights. It called for submission of a stipulation reflecting the terms of the agreement to the District Court in and for Water Division No. 7 and the entry by that Court of a Consent Decree embodying the terms of the Final Settlement Agreement, contingent on the adoption of certain legislation necessary to achieve the terms of the settlement, and the establishment and funding of tribal development funds as contemplated by the 1986 Agreement.

3. In 1988, the United States Congress enacted the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585) (the "Settlement Act"). The Settlement Act authorized the Secretary of the Interior to supply both irrigation and municipal and industrial water supply to the Ute Mountain Ute and Southern Ute Indian Tribes from the Animas-La Plata Project in settlement of water rights claims of the Tribes, and also fulfilled the other requirements of the Final Settlement Agreement. Tribal Development Funds as required under the 1986 Agreement and the Final Settlement Agreement were also established and funded. On December 19, 1991, the various contingencies of the 1986 Agreement and the Final Settlement Agreement having been fulfilled, Consent Decrees were entered by the District Court in and for Water Division No. 7 adjudicating the Tribes' reserved water rights. As provided by the Final Settlement Agreement, however, the Consent Decrees allow the Tribes to litigate or renegotiate their claims from the Animas and La Plata rivers if certain facilities of the Animas La Plata Project were not completed by January 1, 2000.

4. In November, 1989, in furtherance of the 1986 Agreement, the United States and the Colorado Water Resources and Power Development Authority ("Authority") entered into an Agreement and Instructions for Administering Escrow Account for the Animas-La Plata Project, and an Escrow Agreement with the Colorado State Treasurer, (collectively, the "Escrow Agreements"), and established an Escrow Account for funding the State of Colorado's cost-sharing obligation for the Animas-La Plata Project.

5. Construction of the Animas-La Plata Project has not occurred as contemplated by the 1986 Agreement, the Final Settlement Agreement, the Settlement Act, the Consent Decree, or the Escrow Agreements. In December of 2000, the United States Congress enacted the Colorado Ute Settlement Act Amendments of 2000 (Public Law 106-554) (the "2000 Amendments"). The 2000 Amendments authorize the Secretary of the Interior to complete construction of, and to operate and maintain, a reconfigured Animas-La Plata Project, consisting of facilities to divert and store water from the Animas River to provide for an average annual depletion of 57,100 acre-feet of water, to be used for municipal and industrial water supply only, for the Ute Mountain Ute and Southern Ute Indian Tribes and for other tribal and non-tribal entities in the Four Corners Region of the United States.

6. The purpose, therefore, of this Amended and Restated Agreement in Principle Concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas-La Plata Cost Sharing is to amend and restate the 1986 Agreement to reflect the substantial changes to the Animas-La Plata Project, and to effectuate changes to the agreements of the parties concerning final settlement of the Ute Mountain Ute and Southern Ute Indian Tribes' reserved water rights, and cost sharing and financing of the Animas-La Plata Project, necessitated by the changes in the Project and the 2000 Amendments.

Water Rights Settlement.

The United States, acting through the Secretary of the Interior, the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, the State of Colorado, and the Animas-La Plata Water Conservancy District, agree as follows:

1. Background. Section 18(a) of the Settlement Act, as amended by the 2000 Amendments, provides that (a) construction of the Animas-La Plata Project, as reconfigured and described in the 2000 Amendments; (b) allocation of water supply to the Tribes as set forth in the 2000 Amendments; (3) establishment of two Tribal Resource Funds, one each for the Southern Ute and Ute Mountain Ute Indian Tribes, and deposit of \$40,000,000 collectively into those Funds; and (4) issuance of an amended final decree by the District Court in and for Water Division No. 7 providing for the changes made by the 2000 Amendments, shall constitute final settlement of the tribal claims of the Tribes to water of the Animas and La Plata Rivers in the State of Colorado.

2. Construction of Animas-La Plata Project and Allocation of Water Supply. Contingent upon appropriations by Congress and fulfillment of all environmental commitments as set forth in the FSEIS and ROD, and pursuant to federal law and policy, the United States, acting through the Secretary of the Interior, will construct the facilities comprising the Animas-La Plata Project as reconfigured and described in the 2000 Amendments, and will allocate water supply to the Ute Mountain Ute and the Southern Ute Indian Tribes as set forth in Section 6(a)(1)(A) of the Settlement Act, as amended by Section 302 of the 2000 Amendments.

3. Joint Request for Amendment of Consent Decree. No later than April 1, 2002 the United States, the Ute Mountain Ute Tribe, and the Southern Ute Indian Tribe, the State of Colorado, and the Animas-La Plata Water Conservancy District, shall, consistent with Section 18(c) of the 2000 Amendments, jointly petition the District Court in and for Water Division No. 7, State of Colorado for amendments of the Consent Decrees entered in Cases No. W-1603-76F and W-1603-76J: (1) to reflect the changes to the Animas-La Plata Project and the water rights settlement effected by the 2000 Amendments and (2) to extend the deadline for the Tribes to commence litigation (or renegotiation) of their reserved rights claims for waters of the Animas and La Plata rivers from the current deadline of January 1, 2005.

Animas-La Plata Cost Sharing

The United States, acting through the Secretary of the Interior, the State of Colorado, the Colorado Water Resources and Power Development Authority, the Animas-La Plata Water Conservancy District, Ute Mountain Ute Tribe, Southern Ute Indian Tribe, New Mexico Interstate Stream Commission, San Juan Water Commission, and Montezuma County, Colorado, agree as follows:

1. Background. The Animas-La Plata Project as reconfigured and authorized by the 2000 Amendments ("Project"), will be a significantly different and smaller project than was contemplated

by the 1986 Agreement, comprising only those facilities necessary for the diversion and storage of water from the Animas River for municipal and industrial use. The 2000 Amendments authorize the reconfigured Project to deliver municipal and industrial water allocations to certain non-tribal entities as follows:

- (A) San Juan Water Commission: average annual depletions not to exceed 10,400 acre-feet;
- (B) Animas-La Plata Water Conservancy District: average annual depletions not to exceed 2,600 acre-feet
- (C) State of Colorado: average annual depletions not to exceed 5,230 acre-feet;
- (D) La Plata Conservancy District, New Mexico: average annual depletions not to exceed 780 acre-feet.

The 2000 Amendments provide further that the non-Tribal municipal and industrial water capital repayment obligations for the Project may be satisfied upon the payment in full of the non-Tribal water capital obligations prior to the initiation of construction, with the amount of the repayment obligations determined by agreement between the Secretary of Interior and the entity responsible for the repayment as to the appropriate reimbursable share. In such case, interest shall not accrue during construction, and the repaying entity shall not be liable for repayment of any such interest during construction. In addition, the 2000 Amendments provide that the non-Tribal repayment obligation is subject to a final cost allocation upon Project completion, and additional payment, warranted only for reasonable and unforeseen costs associated with Project construction, may be required in order to secure the full storage or water supply allocated to a non-Tribal entity.

By Agreement between the Animas-La Plata Water Conservancy District and the Colorado Water Resources and Power Development Authority dated _____, the Animas-La Plata Water Conservancy District has assigned all its right, title and interest in and to the 2,600 acre-foot average annual municipal and industrial water depletion allocation reserved for the Animas-La Plata Water Conservancy District by the 2000 Amendments, and the Colorado Water Resources and Power Development Authority has agreed to finance and acquire that water allocation. By these presents, the United States, acting through the Secretary of Interior, approves such assignment, and agrees that by virtue of such assignment, the Colorado Water Resources and Power Development Authority has succeeded to the rights and obligations of the Animas-La Plata Water Conservancy District under the 2000 Amendments.

2. Determination of Appropriate Reimbursable Share.

The table below sets forth the amounts that must be paid by each party prior to initiation of construction in order to attain the benefits of Section 302(a)(3)(A) of the 2000 Amendments.

Entity	Percent of Joint Costs	Specific Costs	Joint Costs	Total Costs
Animas-La Plata Water Conservancy District/Colorado Water Resources and Power Development Authority	3.07%	\$582,400	\$6,674,350	\$7,256,750
San Juan Water Commission	3.18%	-0-	\$6,916,722	\$6,916,722
La Plata Conservancy District, New Mexico	1.64%	-0-	\$3,566,970	\$3,566,970
State of Colorado	10.99%	-0-	\$23,871,264	\$23,871,264

3. Cost Sharing/Repayment for Non-Tribal Entity Allocations.

The parties agree that any payment of the water capital obligation for water or storage allocated to non-Tribal entities by the 2000 Amendments that a non-Tribal entity elects to purchase shall be made as determined by separate negotiations between the entity receiving the water and the United States. Each non-Tribal entity may enter into a separate agreement with the Secretary of the Interior for repayment or payment in advance of the non-Tribal water capital obligation.

4. Cost Sharing/Repayment of Animas- La Plata Water Conservancy District Water Allocation.

The United States and the Colorado Water Resources and Power Development Authority agree that the water capital obligation for the water allocation to the Animas-La Plata Water Conservancy District shall be paid as set forth in the Funding Agreement and Repayment Contract, an Amended and Restated Escrow Agreement among the United States Department of the Interior and the Colorado Water Resources and Power Development Authority and the State Treasurer of the State of Colorado and the Amended and Restated Agreement and Instructions for Administering Escrow Account(collectively the Funding and Escrow Agreement) entered into contemporaneously herewith. These agreements will effectuate a re-dedication of a portion of the funds in the Escrow Account established pursuant to the 1989 Escrow Agreement.

5. Cost Sharing/Repayment of San Juan Water Commission Storage Allocation.

The United States and the San Juan Water Commission (“Commission”) agree that the water capital obligation based on the storage allocation to the Commission shall be paid as set forth in the Amendatory Funding Agreement and Repayment Contract, the Escrow Agreement among the United

States Department of the Interior and the Commission and the County Treasurer of the County of San Juan, New Mexico, and the Agreement and Instructions for Administering Escrow Account (collectively the Commission Funding and Escrow Agreements) entered into contemporaneously herewith.

Recreation Facilities

The United States, acting through the Secretary of the Interior, and the State of Colorado, agree as follows:

1. **Background.** The 2000 Amendments authorized the Project Facilities to include those recreation facilities determined to be appropriate by an agreement between the State of Colorado and the Secretary that shall provide for payment of any of the costs of such facilities by the State of Colorado (in addition to any payment for the State of Colorado's municipal and industrial water allocation).
2. **Further Agreement.** Determination of appropriate recreational facilities for the Project, and provision for payment for such facilities, shall be concluded by separate agreement between the United States and the State of Colorado, which agreement shall acknowledge that any funds provided by the State of Colorado for recreation facilities shall constitute cost sharing in the Project by the State of Colorado.

Other

1. **Effect of Agreement.** This Agreement amends and restates the 1986 Agreement in full and therefore supersedes and replaces the 1986 Agreement in full. Accordingly, upon execution of this Agreement by all parties, the 1986 Agreement shall be of no further force and effect, and execution of this Agreement expressly releases all parties from any and all obligations created or subsisting under the 1986 Agreement.

Dated this _____ day of _____, 2001.

This Contract may be executed in any number of counterparts, all of which together shall constitute one original agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written by their respective officers and representatives, and warrants that each is duly authorized by the respective entity to execute this Agreement, which shall bind the parties hereto, their successors and assigns.

Bill Owens

For the State of Colorado

Ken Salazar

For the State of Colorado

Glenn R. Stapp

For the Colorado Water Resources
and Power Development Authority

For the Southern Ute Indian Tribe

For the Animas-La Plata Water
Conservancy District

For the Ute Mountain Ute Tribe

For the New Mexico Interstate
Stream Commission

For the San Juan Water Commission

For Montezuma County

For the Secretary of the Interior

EXHIBIT B

ENVIRONMENTAL COMMITMENTS

4.6.4.3 Impact Analysis

The following sections discuss potential impacts to ITAs and Environmental Justice of Refined Alternatives 4 and 6 and the No Action Alternative. In addition, mitigation measures are proposed to reduce or eliminate potential significant impacts.

4.6.4.3.1 Refined Alternative 4

Indian Trust Assets

Refined Alternative 4 Impact 1 - Potentially Significant: Refined Alternative 4 does not meet the terms and conditions of the Settlement Agreement for the Colorado Ute Tribes.

Refined Alternative 4 would provide storage for a portion of the Colorado Ute Tribes' assured water rights. However, the 39,960 afy of allowed depletion for the Colorado Ute Tribes is 13,240 afy less than that identified in the Settlement Agreement. All water provided under Refined Alternative 4 must be used for M&I purposes, while the Settlement Agreement specified that 3,400 afy of depletion be used for irrigation purposes by the Southern Ute Indian Tribe, and 26,300 afy be used for irrigation purposes by the Ute Mountain Ute Tribe. Because of the reduced amount of depletion, the lack of irrigation water and facilities, the precise terms of the original Settlement Agreement would not be met under Refined Alternative 4.

However, Refined Alternative 4 would provide the Colorado Ute Indian Tribes a means to purchase approximately 13,000 afy through the use of a \$40 million water acquisition fund. This amount could be used to acquire private water rights on a willing buyer/willing seller basis. These funds could also be redirected for on-farm development, water delivery infrastructure, or other economic development uses. Most important, the Colorado Ute Tribes have endorsed Refined Alternative 4 as being sufficient substitute for the original elements of the 1986 Settlement Agreement.

Mitigation for Refined Alternative 4 Impact 1: Seek modification of Settlement Agreement.

Refined Alternative 4 would meet the Settlement Agreement if Congress passes any legislation, with the support of the Colorado Ute Tribes, that specifies that the terms and conditions of Refined Alternative 4 satisfy the Colorado Ute Tribes' water rights. Both Colorado Ute Tribes have passed resolutions supporting the selection of Refined Alternative 4 for settlement of all their remaining water rights claims.

Refined Alternative 4 Impact 2 - Significant: Under present conditions, Refined Alternative 4 reduces the water supply available for the Jicarilla Apache Tribe water rights in the San Juan River.

Relative to no action, Refined Alternative 4 reduces the present supply available to the Jicarilla Apache Tribe to allow utilization of its water rights consistent with the ESA. Section 7(a)(2) of the ESA states that each federal agency shall, in consultation with the Secretary, insure that any action authorized, funded, or carried out by that agency shall not jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. For federal actions in the San Juan basin, such as ALP, the Service has issued reasonable and prudent alternatives which have allowed the action to go forward. In the recent past, these RPA's have required Reclamation to participate in research to determine the flows needed to recover endangered fish species and then to operate Navajo Dam to mimic a natural hydrograph. Thus, according to current modeling, full implementation of the

flow recommendations, NIIP, and ALP could limit further tribal water development in the San Juan Basin. Additionally, there is a potential for an increased risk of an ESA Section 9 violation (Section 9 prohibits the “take” of any listed species) by any non-federal developer of San Juan River Basin water. Because Section 9 of the ESA prohibits a range of activities that include habitat modification, any non-federally related tribal water development activities will incur the potential for an increased risk of “take” of a listed species.

Mitigation for Refined Alternative 4 Impact 2: The following measures would provide some mitigation for the projected impacts.

While Reclamation agrees that future Jicarilla Apache Tribe water development may be adversely affected because of Section 7 concerns, Reclamation also believes that it is still possible that some Jicarilla Apache Tribe water development could occur even if associated with a federal action. The Service, working with Reclamation and other relevant federal agencies, could develop other potential measures, including water management strategies (e.g. appropriate shortage sharing based on actual water use), that can be undertaken as RPA’s that would allow development of future water projects. Whether such RPA’s exist is something that will only be determined through the section 7 consultation process. Thus, it is premature to conclude that development of NIIP and ALP will preclude further federally-related water development in the San Juan basin. The Section 7 consultation process, including participation of the tribe seeking to use water, will need to evaluate all potential RPAs.

It should also be noted that the Administration Proposal, as represented by Refined Alternative 4, was developed, in part, to eliminate the impact of the original ALP Project on the Jicarilla Apache Tribe. The original project envisioned the depletion of 149,000 afy from the San Juan River Basin. Although the full project has not been cleared to proceed under ESA, the finality of the Administration Proposal intended to ensure that both the Jicarilla Apache Tribe and Navajo Nation will not be competing with additional ALP Project depletions in the future. In sum, this proposed action, in and of itself, is a partial mitigation measure for other water development in the San Juan Basin, intended to protect the trust assets of the Jicarilla Apache Tribe (as well as the Navajo Nation).

However, Reclamation recognizes that only a minimal amount of water is available under today’s circumstances and the Preferred Alternative will have some effect on the trust resources of the Jicarilla Apache Tribe, particularly if no RPAs are eventually developed to offset or allow future additional depletions. Reclamation has therefore developed other mitigation measures, including:

- Continue active participation in the San Juan River Basin Recovery Implementation Program to promote the dual goals of recovery of endangered species and proceed with water development in the basin. The SJRRIP is key to facilitating additional water development by the Jicarilla Apache Tribe. Reclamation’s participation includes:
 - Provide substantial technical support in the development and refinement of a comprehensive hydrology model to allow realistic, supportable projections of future water uses within the basin;
 - Continue to optimize the operating rules for Navajo Dam to provide more efficient fulfillment of the flow recommendations necessary for endangered species recovery;
 - Implement an adaptive management program associated with the operation of Navajo Reservoir to evaluate biologic responses to a more natural hydrograph.

- Operate the Durango Pumping Plant to limit pumping during dry years, allowing more water to be available in Navajo Reservoir to meet project demands (see Section 3.2).
- Facilitate discussions between the Jicarilla Apache Tribe and other parties with interests in the San Juan River Basin. Interested parties will include, but not be limited to, the Colorado Ute Tribes, Navajo Nation, the Service, and private parties with existing contracts from Navajo Reservoir. Discussions will aim to develop options for obtaining the 25,500 afy depletion from Navajo River or Reservoir, which is authorized under the Jicarilla Apache Tribe Water Rights Settlement Act. Such discussions among Reclamation, the Jicarilla Apache Tribe, and Public Service Company of New Mexico (PNM) are currently underway to lease 16,200 afy of their water rights to PNM. If successful, this would place a portion of the Jicarilla Apache Tribe's depletion allocation in the baseline.
- Reclamation will work with the Navajo Nation and the Jicarilla Apache Tribe to combine resources in evaluating options for proceeding with the Navajo-Gallup Project, the Navajo River Water Development Plan, and restoration if the Hogback Project to try and minimize the likelihood that any single Tribe bears a disproportionate burden for the conservation of listed species under the ESA.
- Reclamation, through its Native American Affairs and technical assistance programs, will work with the Jicarilla Apache Tribe to facilitate its ability to independently utilize the San Juan River basin hydrologic model to ensure more effective participation in the SJRBRIP and other appropriate uses.
- Reclamation will initiate an independent review of the hydrologic model to ensure its accuracy and value as a tool in future water planning activities.
- Reclamation will consult with the Jicarilla Apache Tribe on the implementation of the above mitigation measures and will commence such consultation early in the implementation process.

Refined Alternative 4 Impact 3 - Significant: Refined Alternative 4 limits the water supply available for the development of the proposed Navajo-Gallup Project designed to deliver drinking water to portions of the Navajo Nation with limited or no supply.

Relative to no action, Refined Alternative 4 reduces the present supply available to the Navajo Nation to allow utilization of its water rights consistent with the ESA. Section 7(a)(2) of the ESA states that each federal agency shall, in consultation with the Secretary, insure that any action authorized, funded, or carried out by that agency shall not jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. For federal actions in the San Juan Basin, such as ALP, the Service has issued reasonable and prudent alternatives which have allowed the action to go forward. In the recent past, these RPA's have required Reclamation to participate in research to determine the flows needed to recover endangered fish species and then to operate Navajo Dam to mimic a natural hydrograph. Thus, full implementation of the flow recommendations, NIIP, and ALP could potentially limit further tribal water development in the San Juan basin. Additionally, there is a potential for an increased risk of an ESA Section 9 violation (Section 9 prohibits the "take" of any listed species) by any non-federal developer of San Juan River Basin water. Because Section 9 of the ESA prohibits a range of activities that include habitat modification, any non-federally related tribal water development activities will incur the potential for an increased risk of "take" of a listed species.

The 2,340 afy depletion provided under the ALP Project would only satisfy a portion of the water needs of the Navajo Nation. The new NNMP would help meet current water demands in the Shiprock area.

Mitigation for Refined Alternative 4 Impact 3: The following measures would provide some mitigation for the projected impacts.

While Reclamation agrees that future Navajo Nation water development may be adversely affected because of Section 7 concerns, Reclamation also believes that it is still possible that some Navajo Nation water development could occur even if associated with a federal action. The Service, working with Reclamation and other relevant federal agencies, could develop other potential measures, including water management strategies, that can be undertaken as RPA's that would allow development of future water projects. Whether such RPA's exist is something that will only be determined through the Section 7 consultation process. Thus, it is premature to conclude that development of NIIP and ALP will preclude further federally-related water development in the San Juan basin. The Section 7 consultation process, including participation of the tribe seeking to use water, will need to evaluate all potential RPAs.

It should be reiterated that the Administration Proposal, as represented by Refined Alternative 4, was developed, in part, to eliminate the impact of the original ALP Project on the Navajo Nation. The original project envisioned the depletion of 149,000 afy from the San Juan River Basin. Although the full project has not been cleared to proceed under ESA, the finality of the Administration Proposal intended to ensure that both the Navajo Nation and Jicarilla Apache Tribe will not be competing with additional ALP Project depletions in the future. In sum, this proposed action, in and of itself, is mitigation to the trust assets of the Navajo Nation (as well as the Jicarilla Apache Tribe). Other mitigation includes:

- Continue active participation in the San Juan River Basin Recovery Implementation Program to promote the dual goals of recovery of endangered species and proceed with water development in the basin. The SJRBRIP is key to facilitating additional water development by the Navajo Nation. Reclamation's participation includes:
 - Provide substantial technical support in the development and refinement of a comprehensive hydrology model to allow realistic, supportable projections of future water uses within the basin;
 - Continue to optimize the operating rules for Navajo Dam to provide more efficient fulfillment of the flow recommendations necessary for endangered species recovery;
 - Implement an adaptive management program associated with the operation of Navajo Reservoir to evaluate biologic responses to normative hydrograph.
- Operate the Durango Pumping Plant to limit pumping during dry years, allowing more water to be available in Navajo Reservoir to meet project demands (see Section 3.2).
- Facilitate discussions between the Navajo Nation and other parties with interests in the San Juan River Basin. Interested parties will include, but not be limited to, the Colorado Ute Tribes, Jicarilla Apache Tribe, the Service, and private parties with existing contracts from Navajo Reservoir. Discussions will aim to develop options for obtaining adequate water for the Navajo-Gallup Project.

- Reclamation will work with the Navajo Nation and the Jicarilla Apache Tribe to combine resources in evaluating options for proceeding with the Navajo-Gallup Project, the Navajo River Water Development Plan, and restoration of the Hogback Project to try and minimize the likelihood that any single tribe bears a disproportionate burden for the conservation of listed species under the ESA.
- Reclamation will initiate an independent review of the hydrologic model to ensure its accuracy and value as a tool in future water planning activities.
- Reclamation will consult with the Navajo Nation on the implementation of the above mitigation measures and will commence consultation early in the implementation process.

The following mitigation measures may affect the ability of the Navajo-Gallup Project to go forward, but are beyond the control of Reclamation as a part of the ALP Project:

- An alternate project design that would take water from the San Juan River below its confluence with the Animas River may increase the potential yield for the project while protecting flows for endangered fish. In this case, releases from Navajo Dam would be supplemental to river flows, leveraging the limited storage volume available and making use of times when there are flows in excess of fish needs in the river.
- The Navajo-Gallup Project could be modified to reduce demands.
- The Navajo Nation could elect to utilize a portion of the NIIP allocation to meet these needs.

Refined Alternative 4 Impact 4 - Significant: Refined Alternative 4 reduces the water supply available for restoration of the Hogback Project in the San Juan River.

Relative to no action, Refined Alternative 4 reduces the present supply available to the Navajo Nation to allow utilization of its water rights consistent with the ESA. Section 7(a)(2) of the ESA states that each federal agency shall, in consultation with the Secretary, insure that any action authorized, funded, or carried out by that agency shall not jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. For federal actions in the San Juan Basin, such as ALP Project, the Service has issued reasonable and prudent alternatives which have allowed the action to go forward. In the recent past, these RPA's have required Reclamation to participate in research to determine the flows needed to recover endangered fish species and then to operate Navajo Dam to mimic a natural hydrograph. Thus, full implementation of the flow recommendations, NIIP, and the ALP Project could potentially limit further tribal water development in the San Juan basin. Additionally, there is a potential for an increased risk of an ESA Section 9 violation (Section 9 prohibits the "take" of any listed species) by any non-federal developer of San Juan River Basin water. Because Section 9 of the ESA prohibits a range of activities that include habitat modification, any non-federally related tribal water development activities will incur the potential for an increased risk of "take" of a listed species.

Mitigation for Refined Alternative 4 Impact 4: The following measures would provide some mitigation for the projected impacts.

Again it is reiterated that the Administration Proposal, as represented by Refined Alternative 4, was developed, in part, to eliminate the impact of the original ALP Project on the Navajo Nation. The original project envisioned the depletion of 149,000 afy from the San Juan River Basin. Although the

full project has not been cleared to proceed under ESA , the finality of the Administration Proposal intended to ensure that both the Navajo Nation and Jicarilla Apache Tribe will not be competing with additional ALP Project depletions in the future. In sum, this proposed action, in and of itself, is mitigation to the trust assets of the Navajo Nation (as well as the Jicarilla Apache Tribe). Other mitigation includes:

Continue active participation in the San Juan River Basin Recovery Implementation Program to promote the dual goals of recovery of endangered species and proceed with water development in the basin. The SJRB RIP is key to facilitating additional water development by the Navajo Nation. Reclamation's participation includes:

- Provide substantial technical support in the development and refinement of a comprehensive hydrology model to allow realistic, supportable projections of future water uses within the basin;
- Continue to optimize the operating rules for Navajo Dam to provide more efficient fulfillment of the flow recommendations necessary for endangered species recovery;
- Implement an adaptive management program associated with the operation of Navajo Reservoir to evaluate biologic responses to more natural hydrograph.

Operate the Durango Pumping Plant to limit pumping during dry years, allowing more water to be available in Navajo Reservoir to meet project demands (see Section 3.2).

Facilitate discussions between the Navajo Nation and other parties with interests in the San Juan River Basin. Interested parties will include, but not be limited to, the Colorado Ute Tribes, the Jicarilla Apache Tribe, the Service, and private parties with existing contracts from Navajo Reservoir. Discussions will aim to develop options for obtaining the 16,420 afy depletion from the San Juan River to meet the needs of the Hogback Project.

Reclamation will work with the Navajo Nation and the Jicarilla Apache Tribe to combine resources in evaluating options for proceeding with the Hogback Project, the Navajo-Gallup Project, and the Navajo River Water Development Plan to try and minimize the likelihood that any single tribe bears a disproportionate burden for the conservation of listed species under the ESA.

Reclamation will initiate an independent review of the hydrologic model to ensure its accuracy and value as a tool in future water planning activities.

Reclamation will consult with the Navajo Nation on the implementation of the above mitigation measures and will commence consultation early in the implementation.

The following mitigation measures may affect the ability of the Hogback Project to be restored, but are beyond the control of Reclamation as a part of the ALP Project:

Private rights could be acquired to meet these needs.

The project could be modified to reduce demands.

- The Navajo Nation could elect to utilize a portion of the NIIP allocation to meet these needs.

Refined Alternative 4 Impact 5 - Potentially Positive: Land purchased with funds could potentially become trust lands.

If land is purchased with associated water rights using the water acquisition fund, such land has the potential to remain as fee land or to be taken into trust. That process may result in the Tribes needing to conduct an analysis of the impact, under NEPA, to local non-Indian communities, and providing means to mitigate such impacts as taxation and regulation of trust lands.

Mitigation for Refined Alternative 4 Impact 5: No mitigation is proposed.

Refined Alternative 4 Impact 6 - Potentially Significant: Sections of the conveyance structures proposed under the non-binding water use scenarios would cut across Colorado Ute Tribal lands, potentially impacting the use of such lands. Relocation of natural gas pipeline(s) may also impact Tribal lands.

Certain sections of the non-binding conveyance structures cut across Colorado Ute Indian reservation lands. Construction of these laterals may result in negative impacts to farmlands, homes, or various other structures in the right-of-way. Natural gas pipelines within Ridges Basin may need to be relocated across the Southern Ute Indian Reservation, potentially impacting such lands.

Mitigation for Refined Alternative 4 Impact 6: Routing of pipelines to avoid impacts and restoration of lands to their original conditions.

Obviously, no conveyance structure will be constructed, nor pipelines relocated, without consultation with and approval of the appropriate Indian tribe. Any homes or other structures on Indian lands would be avoided by routing of the conveyance pipelines. Any Tribal lands disturbed by construction of the conveyance structures would be restored to their original condition. Land would be regraded to the original contour. If croplands are impacted, farmers would receive financial compensation for any crop losses.

Refined Alternative 4 Impact 7 - Potentially Significant: Disturbance during construction of NNMP may affect crop production.

During construction, land would be disturbed along the NNMP corridor. Cropland would be affected. If construction activities occur during the crop production season, cropland in some locations could be taken out of production for a single season, and crops in production could be damaged.

Mitigation for Refined Alternative 4 Impact 7: Any lands disturbed by construction of the NNMP would be restored to their original condition.

Land would be regraded to the original contour. Cropland topsoil would be stockpiled during construction and replaced on croplands at the completion of construction. As much as possible, construction would occur during periods when crops are not cultivated. Farmers would receive financial compensation for any crop losses.

Refined Alternative 4 Impact 8 - Positive: Project water could allow the Colorado Ute Tribes to further develop their mineral resources.

One non-binding water use scenario considered by the Southern Ute Indian Tribe involves opening a coal mine and building a coal-fired power plant, while the Ute Mountain Ute Tribe is considering building a gas-fired power plant. This would allow the Colorado Ute Tribes to develop their coal and natural gas reserves on the reservation, resulting in an economic benefit to the Tribes by providing increased jobs and revenue.

Mitigation for Refined Alternative 4 Impact 8: No mitigation is proposed.

Refined Alternative 4 Impact 9 - Less than Significant: The construction of the NNMP may affect Navajo Nation ITA mineral resources.

Oil and gas wells, sand and gravel, and coal resources occur near the NNMP. Existing oil and gas wells and sand and gravel and coal mining operations would not be affected, but in the future the opportunity to extract these resources could be limited to the presence of the pipeline.

Mitigation for Refined Alternative 4 Impact 9: No mitigation is proposed.

Refined Alternative 4 Impact 10 - Less than Significant: Project development could negatively impact the Colorado Ute Tribes' hunting and fishing rights.

Any project development that would negatively impact hunting and fishing resources, or access to such resources, within the Brunot Agreement Area or otherwise provided through legal settlement or consent decree, would negatively affect the Ute Mountain Ute Tribes' hunting and fishing rights.

Mitigation for Refined Alternative 4 Impact 10: No mitigation is proposed.

Environmental Justice

Refined Alternative 4 Impact 11 - Significant: Refined Alternative 4 limits the water supply available for the development of the proposed Navajo-Gallup Project designed to deliver drinking water to portions of the Navajo Nation with limited or no supply.

See discussion under Refined Alternative 4 Impact 3.

Mitigation for Refined Alternative 4 Impact 11 - See discussion under Mitigation for Refined Alternative 4 Impact 3.

Refined Alternative 4 Impact 12 - Significant: Refined Alternative 4 reduces the water supply available for the Jicarilla Apache Tribe Water Rights in the San Juan River.

Mitigation for Refined Alternative 4 Impact 12 - See discussion under Mitigation for Refined Alternative 4 Impact 3.

Refined Alternative 4 Impact 13 - Potentially Significant: Effects on residences, school, and cemetery along the NNMP corridor.

The NNMP corridor would pass within 100 feet of a minimum of 20 residences or in-use areas. A school and a cemetery on the Navajo Nation are just outside the project area. Short-term noise and vibration impacts would occur during construction and affect nearby residences and the school.

Mitigation for Refined Alternative 4 Impact 13: Reduce impacts on residences, school, and cemetery.

The NNMP corridor would be routed to minimize, and to the maximum extent possible, prevent disturbance or relocation of residences. Prior to initiating any construction activities, project planners would meet individually with all property owners within 100 feet of the corridor. If any residences are required to be relocated, the residents and the Navajo Nation would be compensated according to the stipulations of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USCA 4601-4655. Project planners would work to avoid any disturbance to the cemetery. As required under NAGPRA, consultation would take place with the Navajo Nation Historic Preservation Department and representatives from affected Navajo Nation chapters prior to disturbing any human remains or funerary objects. Additional mitigation measures would be used to minimize noise and vibration impacts. Construction activities would be scheduled during daytime hours (7:00 a.m. to 6:00 p.m.) when within 0.25 mile of a residence. Construction activities would be scheduled during non-school hours when feasible.

4.6.4.3.2 Refined Alternative 6

Potential impacts associated with Refined Alternative 6 as they relate to water resources are listed below. Impacts that could result to land and mineral resources and hunting and fishing rights would be similar to those described under Refined Alternative 4.

Indian Trust Assets

Refined Alternative 6 Impact 1 - Significant: Refined Alternative 6 does not fulfill the terms and conditions of the Settlement Act for the Colorado Ute Tribes.

While Refined Alternative 6 is meant to provide the same amount of water as the Settlement Agreement and as Refined Alternative 4, the Colorado Ute Tribes seem unwilling to accept the terms and conditions of Refined Alternative 6. In response to the Administration Proposal, the Southern Ute Indian Tribe and the Ute Mountain Ute Tribe sent a joint letter to the Secretary of the Interior expressing their desire to have legislation enacted that would authorize the settlement of the outstanding tribal claims on the Animas and La Plata Rivers on the following terms, among other things:

- “1. The construction of a reservoir at Ridges Basin . . . to deliver the average annual depletion of 57,100 acre feet allowed under the previous biological opinions. . .”
- “2. An allocation of those annual depletions among the affected parties that is similar to that envisioned under “ALP Lite” except that the share of depletions for the benefit of the non-Indian irrigators would instead be devoted to non-agricultural local or regional non-Indian community purposes.”
- “3. The decision whether to build the reservoir and its ultimate size would be resolved following the completion of the ongoing environmental analysis. That analysis would determine the size of the inactive pool. . .”

Additionally, on August 24, 1999, the Southern Ute Indian Tribe adopted a resolution (Resolution No. 99-137) in support of the proposed legislation found in H.R. 3112, which states:

5.4 ENVIRONMENTAL COMMITMENTS

This section discusses the environmental commitments that have been made by Interior or Reclamation during the development of Refined Alternative 4 (Reclamation's Preferred Alternative). Reclamation would share responsibility for implementing measures that would avoid or reduce potential environmental impacts of the ALP Project. This responsibility would be shared with other federal agencies, the Colorado Ute Tribes, and other ALP Project beneficiaries, as well as third-party entities which could include Colorado and New Mexico state agencies, local governments, and private developers.

The commitments in this chapter summarize commitments made during the planning process and incorporated into ALP Project plan as discussed in Chapter 2 of this Final Supplemental Environmental Impact State (FSEIS), and mitigation measures proposed in Chapter 3 to reduce or avoid impacts that would otherwise occur as a result of the implementation of the Preferred Alternative. These commitments supersede commitments made by Reclamation in previous ALP Project National Environmental Policy Act (NEPA) documents.

As discussed below, the commitments described herein would be implemented by Interior, or Interior would require their implementation by construction contractors, management authorities, or third-party developers. Commitments for pre-construction activities would generally be completed by Reclamation or by contractors during the final design process and prior to construction activities. Wildlife, wetland, cultural resources and other mitigation would be completed by Reclamation as described in the following paragraphs. Some commitments, such as monitoring or additional studies, would continue beyond completion of construction of structural facilities.

The non-structural component of the Preferred Alternative (i.e., the \$40 million water acquisition fund) would be administered by Interior through the Bureau of Indian Affairs (BIA). It was assumed that the use of this fund would be for acquisition of irrigated agricultural lands and that these lands would remain in irrigated production. In the event that the Colorado Ute Tribes were to elect to fund alternative activities with the water acquisition fund or were to apply for water rights transfers, it would be the responsibility of the water acquisition fund's administering agency to determine appropriate environmental protection measures. It is possible that additional NEPA compliance may be required for such alternative uses.

The use of ALP Project water by either the Colorado Ute Tribes or other ALP Project beneficiaries would result in environmental impacts that would require the implementation of avoidance design specifications and mitigation measures. To the extent that Reclamation can require developers of ALP Project water end uses to implement environmental protection elements into design, Reclamation commits to requiring certain measures as discussed in the following sections. However, all compliance responsibilities and costs associated with end use development would be the responsibility of the third-party developers. As discussed previously, additional NEPA compliance would likely be required for the development of end use facilities to occur. At such time, the lead agency would be responsible for identifying additional environmental commitments specific to the proposed end uses.

5.4.1 General Commitments

Throughout the planning process for the project, efforts have been made to avoid impacts where practicable. If avoidance was not possible, then mitigation measures have been developed to reduce the

level of impact. The mitigation measures for each resource impact were discussed in Chapter 3. In addition to the specific mitigation measures identified in Chapter 3, other management practices will be employed during construction activities to minimize environmental effects and will be included in construction specifications. Many of these measures are required in order to comply with federal, state, or local laws and regulations, regardless of whether they are specifically identified in the report. Reclamation will comply with all relevant federal, state and local laws, ordinances, regulations, and standards during the implementation of the Preferred Alternative. Reclamation will prepare and implement an Environmental Commitment Plan for the project to document and track the completion of the environmental commitments.

5.4.2 Water Resources and Hydrology Commitments

Reclamation will develop an operations plan for the Ridges Basin Pumping Plant that will schedule pumping from the Animas River in a manner to limit impacts to non-Colorado Ute Tribal entities' ability to obtain water from the San Juan River as described under Mitigation for the Refined Alternative 4 Hydrology Impact 2 in Section 3.2.

Reclamation will work with all appropriate state and federal agencies to pursue a method to protect ALP Project water return flows in the La Plata River drainage as a water supply for endangered fish as described under Mitigation for Refined Alternative 4 Hydrology Impact 3 in Section 3.2.

Reclamation will design and develop Ridges Basin Reservoir with a minimum pool of 30,000 af.

5.4.3 Water Quality Commitments

Reclamation will develop and implement a program to reduce, minimize or eliminate temporary, short-term increases in suspended sediment loading or other water quality constituents, potentially caused by project construction, through the incorporation of permits, Best Management Practices (BMPs), and sediment control structures as described under Mitigation for Refined Alternative 4 Water Quality Impacts 1-3 in Section 3.3.

Reclamation will develop and implement a program designed to reduce, minimize or eliminate the temporary, short-term increases in suspended sediment loading that may potentially occur during construction of the non-binding end uses and water conveyance systems through requiring developers and construction contractors to incorporate BMPs and sediment control devices as described under Mitigation for Refined Alternative 4 Water Quality Impact 6 in Section 3.3.

Reclamation will develop, with the Southern Ute Indian Tribe and the States of Colorado and New Mexico, and implement a program to monitor water quality in the Animas River from the Durango Pumping Plant to the confluence with the San Juan River for five years after the Durango Pumping Plant begins operation. The program will be developed to monitor compliance with Tribal and state water quality standards and criteria. The plan should include: objectives, quality assurance and control plans, and noncompliance measures.

5.4.4 Vegetation Commitments

Reclamation will ensure that construction contractors limit ground disturbance to the smallest feasible areas, and will ensure that construction contractors implement BMPs, along with the planting or re-

seeding disturbed areas using native plant species to assist in the re-establishment of native vegetation as described under Mitigation for Refined Alternative 4 Vegetation Impact 5 in Section 3.4. Where feasible, directional borings will be used for river pipeline crossings.

Reclamation will compensate the loss of approximately 1,645 acres of upland vegetation resulting from the construction of the Ridges Basin Reservoir, the Durango Pumping Plant, and other features as described under Mitigation for Refined Alternative 4 Vegetation Impacts 1 and 2 in Section 3.4 as part of the wildlife mitigation plan. The compensation will be part of the total estimated 2,700-2,900 acres of wildlife habitat to be acquired and enhanced to compensate the loss of wildlife habitat in Ridges Basin. The mitigation land acquisition will be completed prior to initiation of ground-breaking construction activities at the reservoir and pumping plant sites. Reclamation will attempt to acquire large contiguous acreage and will attempt to acquire these lands first in the river basins that will be affected by the ALP Project, and then outside of those basins, with the final decision made in consultation with state and federal wildlife agencies.

Reclamation will compensate the loss of 134 acres of wetland/riparian habitat at a mitigation ratio sufficient to replace or exceed the habitat value of wetland/riparian habitat lost as described under Mitigation for Refined Alternative 4 Vegetation Impacts 3 and 4 in Section 3.4. Reclamation will replace lost wetland/riparian areas at a planned ratio of 1.5:1, thus creating approximately 200 acres of replacement wetlands. Mitigation will involve a program of land acquisition, wetland development, and long-term management. To the extent possible, this program will be integrated into the wildlife habitat mitigation program to expand benefits and provide large blocks of contiguous wildlife habitat. For purposes of this FSEIS, it is assumed 600 acres will be necessary for the wetland program. Because of limited water supplies for new wetland creation in the region, restoration of degraded wetlands will be an important component of any wetland plan. As with wildlife habitat mitigation, the La Plata River Basin will be given first priority for wetland development. Lands for wetland mitigation will be acquired prior to initiation of construction of Ridges Basin Dam and overall wetland mitigation physical features will be at least 95 percent completed prior to beginning reservoir filling.

Reclamation will also monitor the Animas River riparian corridor to help determine any effects of the pumping regime on these downstream resources. The monitoring will also include Basin Creek wetlands. Reclamation will also limit ground disturbing activities due to construction of the NNMP and other pipelines and will replace in a 2:1 ratio, riparian trees (cottonwoods) lost due to construction.

Reclamation will require that development of non-binding end uses avoids or minimizes construction impacts to wetland and riparian vegetation located within corridor alignments of the non-binding water conveyance pipelines. Reclamation will require that construction zones be kept to the minimum size needed to meet project objectives. If avoidance is not possible, a riparian/wetland mitigation and monitoring plan will be developed to compensate for the loss of vegetation cover as described under Mitigation for Refined Alternative 4 Vegetation Impact 8 in Section 3.4.

5.4.5 Wildlife Commitments

Reclamation will mitigate the direct and indirect loss of approximately 2,700-2,900 acres of wildlife habitat through the purchase, enhancement, and management of approximately 2,700-2,900 acres of suitable land as described under Mitigation for Refined Alternative 4 Wildlife Impact 1 in Section 3.5. The actual amount of land that will be acquired to obtain this level of mitigation will depend on the potential wildlife value of the lands acquired. All reasonable attempts will be made to acquire interests in lands on a willing seller basis, using fee simple purchases, conservation easements, purchase options,

or life estates, to name a few. However, this does not preclude the use of other authorities available to acquire such land interests. Priority will be given to lands in the La Plata River drainage, as well as in the vicinity of Ridges Basin, to provide replacement habitat for displaced deer, elk, and other wildlife that utilize Ridges Basin and adjacent areas that will be affected. Large, contiguous parcels will be given priority to create unfragmented habitat and to facilitate management. Lands will be managed for wildlife and other uses will not be allowed if it is determined that they will interfere with the wildlife habitat benefits. Acquisition, enhancement, and management plans will be coordinated with the U.S. Fish and Wildlife Service (Service), Colorado Division of Wildlife (CDOW), and possibly the Southern Ute Indian Tribe. Because of the preference to acquire interests in lands on a willing seller basis, it is recognized that the specific parcel location is difficult to establish at this time. If La Plata or Ridges Basin areas are unavailable, lands in other areas of the San Juan River Basin will be sought. Based on similar past programs, it will be feasible to acquire the lands; however, it should be noted that they may not be in the immediate project impact area. Wildlife mitigation land will be acquired prior to award of the contract for construction of Ridges Basin Dam, and development will occur concurrently with the construction of the dam.

Reclamation will develop construction specifications to include noise, traffic, and human use restrictions to minimize disturbance to wildlife near the construction zone of Ridges Basin as described under Mitigation for Refined Alternative 4 Wildlife Impact 2 in Section 3.5. The Carbon Mountain gas pipeline route, which could significantly impact golden eagle nesting, will not be considered. Reclamation will make efforts to avoid construction during the May-July period in the vicinity of elk calving areas to minimize impacts to elk.

Reclamation will ensure that recreational facilities and the new alignment for County Road (CR) 211 are sited or restricted in such a way to minimize the disruption of deer and elk habitat utilization and behavior as described under Mitigation for Refined Alternative 4 Wildlife Impact 3 in Section 3.5. Designs of road crossings, particularly in the vicinity of Wildcat Creek, will contain special provisions to minimize wetland/riparian resources as described in Section 3.4, Mitigation for Refined Alternative 4 Impacts 1 and 2. Habitat impacts discussed previously include indirect impacts. Indirect impacts will be managed through a plan that will support the minimization or elimination of those conflicts/impacts. Recreation facilities will not be permitted on the west or south sides of the reservoir to reduce impacts to big game migration corridors. Trails will be restricted to foot traffic. Wildlife-related activities will be encouraged. Future use of Reclamation lands for cabin sites or similar uses will not be allowed. Sufficient land will be acquired at the time reservoir right-of-way is acquired at the upper (western) end of the reservoir (at least one-quarter mile) and along the southern shore to maintain a wildlife migration corridor around the reservoir and to winter ranges to the south.

Reclamation will collaborate with raptor specialists from the Service and CDOW on road realignment and construction activities at Ridges Basin Dam to identify and implement measures minimizing effects on existing golden eagles and their nests on Carbon Mountain as described under Mitigation for Refined Alternative 4 Wildlife Impact 4. All reasonable means to preclude human activity on Carbon Mountain will be pursued. All power lines will be designed raptor-proof.

Reclamation will require that a 0.25-mile buffer around the existing golden eagle nests be identified and that all reasonable measures are pursued to preclude human activity on Carbon Mountain during the nesting period of golden eagles (December 1 through July 15), as described under Mitigation for Refined Alternative 4 Wildlife Impact 5 in Section 3.5.

Reclamation will ensure that development of non-binding end uses and conveyance systems avoid or minimize construction impacts to wetland and riparian vegetation wildlife habitat located within the potential corridor alignments of the non-binding water conveyance pipelines and that construction zones are the minimum necessary to meet project objectives as described under Mitigation for Refined Alternative 4 Wildlife Impact 7 in Section 3.5. If avoidance is not possible, Reclamation will require that a riparian/wetland habitat mitigation and a monitoring plan is developed to compensate for the loss of habitat value.

5.4.6 Aquatic Resources Commitments

The Service recommended that water pumped to Ridges Basin Reservoir from the Animas River be delivered into the reservoir at an elevation below the thermocline. This could lessen the likelihood of periodically having reservoir water temperatures becoming too warm to support trout and could increase oxygen levels in the reservoir. Reclamation does not believe there is sufficient information to adopt this measure at this time. Reclamation will, therefore, fund a more further detailed evaluation of Ridges Basin Reservoir's expected limnological conditions to better determine whether or not there is a significant concern to include this recommendation in the project plan. This commitment is described under Mitigation for Refined Alternative 4 Aquatic Resources Impact 2 in Section 3.6. The evaluation will be completed in coordination with the Service as part of the design data collection activities.

Reclamation will develop and implement a monitoring program at Ridges Basin Reservoir to determine the extent of bioaccumulation of trace elements in fish within the reservoir. The reservoir basin's vegetation will be largely cleared in order to reduce the magnitude of productivity and reduction potential. This, in turn, will limit mercury becoming methylated, the form in which it is available to bioaccumulate within the food chain. Trout will be the only fish stocked. Trout are not at the top of the fish food chain; therefore, they will not be expected to accumulate significant levels of bioaccumulated trace elements. The program will last two consecutive years and be initiated two years after the reservoir is filled. If significant bioaccumulation effects are identified, Reclamation will work with the appropriate local, state or federal agencies to either minimize the impact or otherwise offer protection to potentially impacted fish and wildlife species and to possibly post human fish consumption advisories at the reservoir. This commitment is also described under mitigation for Refined Alternative 4 Aquatic Resources Impact 3 in Section 3.6

To minimize downstream stranding of fish due to the operation of the pumping plant, changes in the pumping will be staged in the following manner: An increase in pumping not to exceed 50 cfs per hour (hr) stage decrease and a decrease in pumping not to exceed 100 cfs/hr (stage increase) when natural river flows are above 500 cfs. At lower flow, these ramping rates could substantially change river stage. Therefore, when river flows are at or below 500 cfs, increases in pumping will not exceed 25 cfs/hr and decreases in pumping will not exceed 50 cfs/hr. This commitment is also described under Mitigation for Refined Alternative 4 Aquatic Resources Impact 6 in Section 3.6. Seasonal bypass flows will be met (ranging from 125 - 225 cfs) as described under mitigation for Refined Alternative 4 Aquatic Resources Impact 1.

Monitoring studies of project-affected waters on the Animas River will be implemented both prior to and continuing for at least four years after project operations begin (project pumping). These studies will be designed to better define the native fishery, to include better understanding apparent problems with native sucker recruitment, and to monitor trout populations. If it is concluded that the operation of the project is having significant adverse impacts to the downstream aquatic ecosystem, Reclamation will make every reasonable effort to modify project operations to either reduce or eliminate these impacts.

The potential impact to native fishes in the Animas River, especially the effects of chronic habitat reduction, may not be directly mitigatable on the Animas River. Investigations should be initiated to determine whether or not fish barriers exist, whether small fish/young-of-the-year fish are significantly lost through entrainment in canals, and whether any significant loss to the trout fishery occurs. The monitoring program will be initiated in 2000 that will incorporate these additional elements into a monitoring study currently being conducted on the Animas River. A firm recommendation for mitigation due to the effects on native fishes will be made by no later than 2005, at least two years prior to project pumping from the Animas River. Once this mitigation recommendation is approved and agreed to by the Service, CDOW, New Mexico Department of Game and Fish (NMDGF), and perhaps the Southern Ute Indian Tribe, its implementation will immediately begin. This commitment is also described under mitigation for Refined Alternative 4 Aquatic Resources Impact 4 in Section 4.6.

Reclamation will review and adopt established guidelines for screening facilities to minimize fish entrainment and impingement at the Ridges Basin Pumping Plant. Reclamation will also ensure that design specifications include Best Available Technologies as described under Mitigation for Refined Alternative 4 Aquatic Resources Impact 5 in Section 3.6.

Reclamation will either screen or implement other physical structures to prevent live fish from being released from Ridges Basin Reservoir. The reservoir outlet system will be designed and fitted with devices to eliminate survival of fish escaping the reservoir. Reclamation will monitor escapement from the reservoir and Basin Creek as described under mitigation for Refined Alternative 4 Aquatic Resources Impact 7 in Section 3.6.

Reclamation will fund the acquisition and stocking of wild strains of trout annually in the Animas River within the boundaries of the Southern Ute Indian Reservation to compensate for fish loss due to the reduction in usable trout habitat. Individual stocks of trout will be marked in such a manner that age groups could be monitored over time. This monitoring plan will be developed in consultation with the Service, CDOW, NMDGF, and the Tribe. The relative success of this effort will be assessed after four years. If it is deemed a success—that is, if the trout biomass within the stocked reaches of the river is elevated to a point of supporting a recreational fishery—the stocking program will continue. For the acquisition of trout stock, Reclamation will consider the development of a new hatchery in cooperation with the Southern Ute Indian Tribe and others. This same hatchery could very well be utilized for providing for fish stocking for Ridges Basin Reservoir.

Reclamation will commit to providing trout to be stocked at Ridges Basin Reservoir to provide a recreational fishery. The source of fish could be from an existing Colorado River Storage Project (CRSP) hatchery facility or from the acquisition and/or construction of a new hatchery facility. This commitment is for the purposes of enhancing the fishery at Ridges Basin Reservoir.

As described in Section 5.4.11, Reclamation will acquire at least two new public access points on the Animas River for fishing and other recreational use.

5.4.7 Special Status Species Commitments

Reclamation will implement conservation measures found in the latest Biological Opinion on the project (see Attachment G for complete list). These measures address the Colorado pikeminnow and razorback sucker that are found in the San Juan River and the bald eagle that is found throughout the project area.

The conservation measures include Reclamation's commitment to operate Navajo Reservoir and the Durango Pumping Plant to mimic the natural hydrograph of the San Juan River to benefit the endangered fish and their habitat. Also, Ridges Basin outlet facilities will be designed to prevent escapement of nonnative fish, that might compete with native fish, into the Animas or other area waterways.

Reclamation will develop and implement a monitoring program for potential adverse bioaccumulation of trace elements in bald eagle food items in Ridges Basin Reservoir. If the program identifies a problem with trace elements, Reclamation will develop and implement an action plan to minimize impacts to bald eagles. Bypass flows compatible with the endangered fish recovery efforts will be incorporated into the project plan to promote natural recruitment of cottonwood trees. This should avoid impacts to future bald eagle habitat. Also, electrical transmission lines associated with the project will be designed to avoid injury to raptors, including bald eagles.

Project wildlife and wetland mitigation areas should provide high quality, protected habitats for species such as the southwestern willow flycatcher and bald eagle in the area.

5.4.8 Geology and Soils Commitments

Reclamation will reduce or eliminate the potential for earthquake damage to the Ridges Basin Dam site through specific design specifications. Dam specifications will require design performance to withstand a maximum credible earthquake for seismic sources in the vicinity of Ridges Basin Dam site as described under Mitigation for Refined Alternative 4 Geology Impact 1 in Section 3.8.

Reclamation will develop and implement a controlled program for filling Ridges Basin Reservoir to reduce the potential for induced seismic impacts as described under Mitigation for Refined Alternative 4 Geology Impact 2 in Section 3.8.

Reclamation will develop and implement a facilities operation program that includes monitoring the reservoir shoreline and slopes for landslide and slumping. Reclamation will also provide for public notification and control public access in areas where high landslide and slumping potential exists as described under Mitigation for Refined Alternative 4 Geology Impact 3 in Section 3.8.

Reclamation will develop an engineered process plan to limit, control, and manage dam site methane gas releases during construction. Reclamation will also monitor the area for methane gas releases during operations as described under Mitigation for Refined Alternative 4 Geology Impact 4 in Section 3.8.

Reclamation will investigate the potential of gas release due to man-made intrusions within Ridges Basin and the proposed dam site. Specifically, construction investigations will study the integrity of abandoned exploration wells and the Gates Coal Mine as described under Mitigation for Refined Alternative 4 Geology Impact 5 in Section 3.8.

Reclamation will mandate that construction contractors use and implement measures contained in erosion control guidelines and BMPs to control soil erosion from construction areas as described under Mitigation for Refined Alternative 4 Soils Impact 1 in Section 3.8.

Reclamation will develop and implement a program to control reservoir filling and drawdown at rates sufficient to reduce significant erosion and sedimentation potential as described under Mitigation for Refined Alternative 4 Soils Impact 2 in Section 3.8.

5.4.9 Cultural and Paleontologic Resources Commitments

Reclamation will ensure compliance with historic/archaeological treatment measures and disseminate results pursuant to the Programmatic Agreement executed to meet Section 106 requirements for Refined Alternative 4 Cultural Impacts 1-3 in Section 3.9. Attachment H contains a Draft Amended Programmatic Agreement for the ALP Project. Reclamation will also finalize a Historic Preservation Management Plan which puts the Programmatic Agreement into operation.

Reclamation will ensure compliance with mitigation measures developed in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA) and Executive Order 13007 as described under Mitigation for Refined Alternative 4 Cultural Impact 4 in Section 3.9. Appendix H contains a draft NAGPRA Plan for the ALP Project.

Reclamation will ensure that areas to be disturbed are field surveyed prior to construction disturbance and will ensure that construction monitoring is conducted where deemed appropriate as described under Mitigation for Refined Alternative 4 Paleontologic Impact 1 in Section 3.9.

Reclamation will ensure that periodic shoreline monitoring is conducted as part of the facilities operations plan as described under Mitigation for Refined Alternative 4 Paleontologic Impact 2 in Section 3.9.

5.4.10 Agriculture Commitments

Location, design, and construction timing of the NNMP would protect agricultural lands as described under Mitigation for Refined Alternative 4 Agriculture Impact 2 in Section 3.10.

5.4.11 Recreation Commitments

Reclamation will pursue pumping regimes that reduce adverse flow effects on boating opportunities within the Animas River when possible and will take steps to improve public access to the river as described under Mitigation for Refined Alternative 4 Recreation Impacts 1 and 2 in Section 3.11.

Reclamation will alter pumping regimes during periods of competitive events as described under Mitigation for Refined Alternative 4 Impact 3 in Section 3.11.

Reclamation, as part of both the fishery and recreation mitigation program, will acquire or provide funding (not to exceed \$500,000) for the acquisition of public access at a minimum of two points on the Animas River between the High Bridge and Basin Creek to reduce effects to anglers on the Animas River as described under Mitigation for Refined Alternative 4 Recreation Impact 4 in Section 3.11.

5.4.12 Socioeconomics Commitments

No environmental commitments are made for socioeconomic resources.

5.4.13 Land Use Commitments

No environmental commitments are made for land use resources.

5.4.14 Hazardous Materials Commitments

Reclamation will ensure that the Durango Pumping Plant is designed to minimize the disturbance of contaminated materials. Reclamation will also ensure that procedures will be developed for radiological monitoring of excavated soils and groundwater encountered and that remedial procedures are planned in advance to counteract the potential for human exposure and for the prevention of contaminated groundwater release from the construction site as described under Mitigation for Refined Alternative 4 Hazardous Materials Impact 1 in Section 3.14.

Reclamation will ensure that all federal and state requirements pertaining to the management and handling of hazardous materials, mixed wastes and radioactive waste are followed and will include those requirements within construction contract language inclusive of construction safety and environmental compliance as described under mitigation for Refined Alternative 4 Hazardous Materials Impact 2 in Section 3.14.

Reclamation will require that construction specifications for Ridges Basin Dam and Reservoir, the Ridges Basin Inlet Conduit, road relocation, and related work prohibit contractors from disturbing the disposal cell. Reclamation will take steps to ensure that the disposal cell has appropriate signage to make the public aware of its presence and any personal hazards that it could present, as described under Mitigation for Refined Alternative 4 Hazardous Materials Impact 3 in Section 3.14.

Reclamation will confer with DOE and their Long-Term Surveillance and Maintenance Program to understand the current operational scheme and parameters for the Bodo Canyon disposal cell. As well, Reclamation will reactivate sampling and monitoring of wells DH-228 and DH-229 for indicator parameters including but not limited to Molybdenum, Selenium, and Uranium, as described under Mitigation for Refined Alternative 4 Hazardous Materials Impact 5 in Section 3.14.

Reclamation will require that preconstruction surveys are conducted for non-binding water end use facilities and conveyance system development and that hazardous material standards relating to construction are adhered to as described under Mitigation for Refined Alternative 4 Hazardous Materials Impact 6 in Section 3.14.

5.4.15 Transportation Commitments

Reclamation will conduct a transportation survey prior to construction of Ridges Basin Dam and Reservoir and will implement methods to reduce traffic-related impacts as described under Mitigation for Refined Alternative 4 Transportation Impacts 1 and 2 in Section 3.15.

Reclamation will ensure to maintain CR 211 roadway, shoulder, drainage, and roadside to standards adequate to avoid noticeable degradation as described under Mitigation for Refined Alternative 4 Transportation Impact 3 in Section 3.15.

Reclamation will require third-party developers of recreation facilities at Ridges Basin Reservoir to conduct traffic engineering impacts analysis studies and to mitigate recreation facility impacts according

to state and county standards. Associated costs will be the responsibility of the developing entity as described under Mitigation for Refined Alternative 4 Transportation Impact 7 in Section 3.15.

5.4.16 Air Quality Commitments

Reclamation will require that construction contractors implement measures to control fugitive dust and exhaust emissions during construction as described under Mitigation for Refined Alternative 4 Air Quality Impact 1 in Section 3.16.

Reclamation, or other responsible federal agency, will require third-party developers to implement measures to control fugitive dust and other emissions during construction and operation of non-binding end uses.

5.4.17 Noise Commitments

Reclamation will require that the Durango Pumping Plant construction contractor restrict operation of heavy equipment during the nighttime hours as described under Mitigation for Refined Alternative 4 Noise Impact 1 in Section 3.17.

Reclamation will ensure that construction contractors provide blasting notification to residents, sound pre-blast alarms, and follow the construction safety plan as described under Mitigation for Refined Alternative 4 Noise Impact 2 in Section 3.17.

Construction and operation of the Durango Pumping Plant will be carried out to reduce noise impacts as described under Mitigation for Refined Alternative 4 Noise Impacts 3 and 4 in Section 3.17.4.1. Noise reduction will be provided in the form of sound insulation within the pumping plant and vegetation screening designed as part of site landscaping. Ridges Basin specifications will provide for noise control, particularly relating to golden eagle nesting.

Reclamation will ensure that construction contractors schedule construction activities to avoid or minimize loud activities in the vicinity of golden eagle nesting areas during the nesting season and that nesting areas are “off limits” to construction forces and visitors as described under Mitigation for Refined Alternative 4 Noise Impact 4 in Section 3.17.

Reclamation will require that third-party developers of recreation facilities at Ridges Basin Reservoir incorporate in a recreation development/management plan the requirement to prohibit particularly loud forms of watercraft and to include signing to advise people of eagle nesting sensitivity to human presence and noise as described under Mitigation for Refined Alternative 4 Noise Impact 5 in Section 3.17.

Reclamation will ensure that developers and contractors associated with construction and operation of the non-binding end uses incorporate methods to minimize noise disturbances as described under Mitigation for Refined Alternative 4 Noise Impact 6 in Section 3.17.

5.4.18 Public Health and Safety Commitments

Reclamation will ensure that public access to structural component construction areas will be controlled by signage and by fencing around construction areas as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 1 in Section 3.18.

Reclamation will ensure that contractors configure haul routes and access roads to prevent or discourage public vehicular entry, including placement of signs warning against entry as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 2 in Section 3.18.

Reclamation will ensure that all the potentially affected gas companies will be contacted prior to construction crossings of gas pipelines which will be precisely located and appropriately marked in the field and on the specifications as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 3 in Section 3.18.

Reclamation will ensure that public access to end use and delivery system construction areas is controlled by signage and by fencing around construction areas as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 4 in Section 3.18.

Reclamation will investigate the potential for gas release due to man-made intrusions, prior to construction, and will monitor excavations for the presence of coal bed methane gas, as described under Mitigation for Refined Alternative 4, Public Health and Safety Impact 5 in Section 3.18.

Reclamation will control public access to operation areas that could pose a threat to public safety as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 6.

Reclamation will ensure that recreation area planning, final design of facilities, and reservoir access points are developed to promote safety and use of accident management techniques as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 7 in Section 3.18.

5.4.19 Public Services and Utilities Commitments

Reclamation will ensure that construction contractors adequately secure and patrol their work sites and will coordinate with city or county law enforcement agencies as described under Mitigation for Refined Alternative 4 Public Services and Utilities Impact 1 in Section 3.19.

Reclamation will ensure that contractors will mark the locations of existing buried utilities and develop a notification system for coordination with affected utilities during construction as described under Mitigation for Refined Alternative 4 Public Services Utilities Impact 4 in Section 3.19.

5.4.20 Visual Resources Commitments

Reclamation will ensure that as part of construction design, the Durango Pumping Plant blends into the natural landform and that, following construction, the site is adequately revegetated as described under Mitigation for Refined Alternative 4 Visual Impact 1 in Section 3.20.

Reclamation will ensure that the design of structural facilities incorporates, to the extent practicable, non-intrusive design elements and that restoration of disturbed areas be conducted as described under Mitigation for Refined Alternative 4 Visual Impact 2 in Section 3.20.

5.4.21 Indian Trust Assets and Environmental Justice Commitments

Interior will support the modification of the Settlement Agreement, through legislated amendments to the Settlement Act, to recognize the new limits placed on the use and amount of water provided to the Colorado Ute Tribes and establishment of the water acquisition fund.

Interior will pursue the development of operation plans for Ridges Basin and Navajo Reservoirs that will optimize more efficient delivery of the flow recommendations for endangered fish in the San Juan River and limit certain project pumping to allow for making additional depletions and developable water available for other Indian tribes' present and future water needs.

Interior will facilitate discussions between the Jicarilla Apache Tribe and other parties with interest in the San Juan River Basin to develop options of obtaining 25,500 afy depletion as authorized under the Jicarilla Apache Tribe Water Rights Settlement Act.

AMENDED AND RESTATED ESCROW AGREEMENT

This Amended and Restated Escrow Agreement is executed this 9th day of November, 2001, among the United States Department of the Interior ("Interior") and the Colorado Water Resources and Power Development Authority (the "Authority") (jointly known as the "Depositors"), and the State Treasurer of the State of Colorado (the "Treasurer").

WHEREAS, the United States, the State of Colorado, the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, the Colorado Water Resources and Power Development Authority, the Animas-La Plata Water Conservancy District, the New Mexico Interstate Stream Commission, the San Juan Water Commission, and Montezuma County, Colorado, entered into an Agreement in Principle concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas-La Plata Project Cost Sharing ("Cost Sharing Agreement") on June 30, 1986; and

WHEREAS, the Cost Sharing Agreement provided for the establishment of an escrow account upon the occurrence of certain conditions precedent, to be funded by the Authority and drawn upon by the Secretary of Interior ("Secretary") to defray a portion of the construction costs of certain facilities of the Animas-La Plata Project, in fulfillment of the State of Colorado's obligations under the Cost Sharing Agreement; and

WHEREAS, on November 10, 1989, the United States and the Authority entered into an Agreement and Instructions for Administering Escrow Account, and the United States, the Authority, and the Colorado State Treasurer entered into an Escrow Agreement (collectively, the "Escrow Agreements"), both agreements relating to the Escrow Account for the State of Colorado's cost-sharing participation in the Animas-La Plata Project; and

WHEREAS, pursuant to the Escrow Agreements, the sum of \$29,948,432 was duly placed in escrow with the Colorado State Treasurer in order to fulfill the State of Colorado's obligations pursuant to the Cost Sharing Agreement; and

WHEREAS, as a result of investment returns and interest, the Escrow Account has increased to \$42,400,000; and

WHEREAS, the construction of the Animas-La Plata Project has not occurred in the manner contemplated by the Cost Sharing Agreement and the Escrow Agreements, and Congress has provided new authority in Public Law 106-554 (the "2000 Amendments") to construct a modified Animas-La Plata Project in order to effectuate the Colorado Ute Indian Water Rights Settlement; and

WHEREAS, the 2000 Amendments eliminate the requirement for cost sharing in the construction of the Animas-La Plata Project; and

WHEREAS, the 2000 Amendments provide for the construction of Project facilities to deliver certain municipal and industrial water allocated to the Animas- La Plata Water Conservancy

District, a political subdivision of the State of Colorado, and allow the payment of the water capital obligations attributable to such allocation prior to initiation of construction of the Project; and

WHEREAS, the Authority is authorized by §§37-95-101, et. seq., C.R.S., and by Resolution of the General Assembly of the State of Colorado, Senate Joint Resolution 6, 1982 Session Laws 702, to consider financing or participating in the financing of the Animas-La Plata Project including contracting with any person or governmental agency for the construction and/or the sale of the output of the Animas-La Plata Project; and

WHEREAS, the Authority and the Animas-La Plata Water Conservancy District have entered into an Agreement in Principle, contemporaneously herewith, pursuant to which the Authority has acquired by assignment from the Animas-La Plata Water Conservancy District its interest in the 2,600 acre-feet of municipal and industrial water depletions allocated to the Animas-La Plata Water Conservancy District by the 2000 Amendments, and intends to fund the reimbursable share of construction costs allocated to such water, and to market and sell such water in conjunction with the Animas-La Plata Water Conservancy District; and

WHEREAS, Interior and the Authority have entered into an Amended and Restated Agreement and Instructions for Administering Escrow Account pursuant to which they have agreed to amendments to the Escrow Account and its administration in order to address the changes to the Animas-La Plata Project described above; and

WHEREAS, pursuant to the Escrow Agreement between the parties dated November 10, 1989, the Agreement may be amended by a written instrument executed by the Depositors and the Treasurer, and the Treasurer's consent to amend the Agreement shall not be unreasonably withheld when it is requested by the Depositors;

NOW THEREFORE, the parties hereto agree as follows:

1. Adjustment of Escrow Deposit: The sum of \$35,143,250 currently on deposit in the escrow account shall be and hereby is released from the existing escrow account and shall be delivered to the Authority. The sum of \$7,256,750 shall remain in the escrow account. The foregoing sum shall hereinafter be referred to as the "Escrowed Property."

2. Instructions: The Treasurer shall hold and disperse the Escrowed Property in accordance with the instructions set forth on the attached Schedule A, which is incorporated into and made a part of this Agreement by this reference. To assist the Treasurer in performing his function, the Authority will provide to the Treasurer prior to the beginning of each fiscal year an estimate of the maximum allowable draw by Interior on the account during that fiscal year. Such estimates may be changed from time to time. The Treasurer will be informed of changes.

3. Investment of Funds: Any cash deposited pursuant to the terms of this Agreement shall be invested by the Treasurer, in accordance with the written direction of the Authority. Such investments may be in any investment authorized pursuant to Schedule A. The Authority shall

provide the Treasurer with an overall investment plan for management of the funds. Such plan may be changed from time to time at the sole discretion of the Authority, and the Authority's specific investment decisions may vary from the plan. The Treasurer will provide the Depositors a monthly statement of the account showing cash on deposit and investments. The statement will be issued on the regular schedule for such statements of the Treasurer's office.

4. Late Payment or Performance: Subject to Schedule A, which shall control in case of conflict, the Treasurer may accept any payment or performance called for under this Agreement after the date such payment or performance is due, unless subsequent to such a date, but prior to the actual date of payment or performance, the Treasurer is instructed in writing by a Depositor not to accept such payment or performance.

5. Waivers: The failure of any party to the Agreement at any time or times to require performance to any provision under this Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any party to the Agreement of any such condition or breach of any term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or a breach of any other term, covenant, representation or warranty contained in this Agreement.

6. Termination: Termination shall be in accordance with Schedule A. In addition to and notwithstanding the provisions of Schedule A, the parties hereby agree that the Treasurer shall upon receipt of the certification of the Attorney General of the State of Colorado and a Resolution duly passed by the Board of Directors of the Colorado Water Resources and Power Development Authority, delivered by certified mail to the Treasurer with copies to the Depositors, that the Amended Agreement and Instructions for Administering Escrow Account between the United States Department of the Interior and the Colorado Water Resources and Power Development Authority, Animas-La Plata Project Colorado and New Mexico (Schedule A) is terminated, return all remaining Escrowed Property, including any interest or earnings thereon, to the Colorado Water Resources and Power Development Authority or its successors or assigns, after which this Agreement shall be deemed terminated.

7. Extension of Benefits: All of the terms of this Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by the respective successors and assigns of all of the parties to the Agreement.

8. Counterparts: This Agreement may be executed in several counterparts, each of which when executed shall be deemed to an original, and all of which counterparts shall together constitute one and the same instrument.

9. Amendment: This Amendment may be amended, modified, superseded, rescinded, or canceled only by a written instrument executed by the Depositors and the Treasurer. The Treasurer shall not unreasonably withhold consent to amend when it is requested by the Depositors.

10. Governing Law: This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado and the United States.

11. Notices: All notices, requests, demands, or other communications required under this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered or mailed by certified mail with return receipt requested and postage prepaid. If any notice is mailed, it shall be deemed given upon the date such notice is deposited in the United States mail. If any notice is personally delivered, it shall be deemed given upon the date of such delivery.

If notice is given to the Depositors it shall be addressed to:

Executive Director
Colorado Water Resources and Power Development Authority
1580 Logan Street, Suite 620
Denver, Colorado 80203-1943

Regional Director
Department of the Interior, Bureau of Reclamation
125 South State Street, Room 6107
Salt Lake City, Utah 84138-1102

If notice is given to the Treasurer it shall be addressed to:

The State Treasurer of the State of Colorado
140 State Capitol
Denver, Colorado 80203

Any change in the foregoing addresses shall be in writing and delivered to the other parties of this Agreement.

12. The Entire Agreement: This Amendment and Restatement of Escrow Agreement and the attached Schedule A sets forth the entire agreement and understanding of the parties supercedes, in full, the Escrow Agreement dated November 10, 1989, to this Agreement.

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

**THE COLORADO WATER RESOURCES AND
POWER DEVELOPMENT AUTHORITY**

By: James R. Shuf
Chair

ATTEST:

Deanne Bohrer
Asst. Secretary

**THE UNITED STATES DEPARTMENT OF THE
INTERIOR**

By: Rick J. Gold
Regional Director, Bureau of Reclamation

ATTEST:

John Lytle
Office of the Solicitor

STATE TREASURER, STATE OF COLORADO

By: Mike Coffey

SCHEDULE A**AMENDED AND RESTATED AGREEMENT AND
INSTRUCTIONS FOR
ADMINISTRATING ESCROW ACCOUNT BETWEEN
THE UNITED STATES DEPARTMENT OF THE INTERIOR
AND THE COLORADO WATER RESOURCES AND POWER
DEVELOPMENT AUTHORITY ANIMAS-LA PLATA PROJECT
COLORADO/NEW MEXICO**

This Amended and Restated Agreement is entered into this 9th day of November, 2001, among the United States Department of the Interior (hereinafter "Interior") and the Colorado Water Resources and Power Development Authority (hereinafter "Authority").

WHEREAS, the United States, the State of Colorado, the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, the Colorado Water Resources and Power Development Authority, the Animas-La Plata Water Conservancy District, the New Mexico Interstate Stream Commission, the San Juan Water Commission, and Montezuma County, Colorado, entered into an Agreement in Principle concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas-La Plata Project Cost Sharing" ("Cost Sharing Agreement") on June 30, 1986; and

WHEREAS, the Cost Sharing Agreement provided for the establishment of an escrow account upon the occurrence of certain conditions precedent, to be funded by the Authority and drawn upon by the Secretary of Interior ("Secretary") to defray a portion of the construction costs of certain facilities of the Animas-La Plata Project, in fulfillment of the State of Colorado's obligations under the Cost Sharing Agreement; and

WHEREAS, on November 10, 1989, the United States and the Authority entered into an Agreement and Instructions for Administering Escrow Account, and the United States, the Authority, and the Colorado State Treasurer (the "Escrow Agent") entered into an Escrow Agreement (collectively, the "Escrow Agreements"), both agreements relating to the Escrow Account for the State of Colorado's cost-sharing participation in the Animas-La Plata Project; and

WHEREAS, pursuant to the Escrow Agreements, the sum of \$29,948,432 was duly placed in escrow with the Colorado State Treasurer in order to fulfill the State of Colorado's obligations pursuant to the Cost Sharing Agreement; and

WHEREAS, as a result of investment returns and interest, the Escrow Account has increased to \$42,400,000; and

WHEREAS, the construction of the Animas- La Plata Project has not occurred in the manner contemplated by the Cost Sharing Agreement and the Escrow Agreements, and Congress has provided new authority in Public Law 106-554 (the "2000 Amendments") to construct a modified Animas-La Plata Project in order to effectuate the Colorado Ute Indian Water Rights Settlement; and

WHEREAS, the 2000 Amendments eliminate the requirement for cost sharing in the construction of the Animas-La Plata Project by the State of Colorado; and

WHEREAS, the 2000 Amendments provide for the construction of Project facilities to deliver certain municipal and industrial water allocations to the Animas-La Plata Water Conservancy District, a political subdivision of the State of Colorado, conditioned, however, upon payment of the water capital obligations attributable to such allocations prior to initiation of construction of the Project; and

WHEREAS, the Authority is authorized by §§37-95-101, et. seq., C.R.S., and by Resolution of the General Assembly of the State of Colorado, Senate Joint Resolution 6, 1982 Session Laws 702, to consider financing or participating in the financing of the Animas-La Plata Project including contracting with any person or governmental agency for the construction and/or the sale of the output of the Animas-La Plata Project; and

WHEREAS, the Authority and the Animas-La Plata Water Conservancy District have entered into an Agreement, contemporaneously herewith, pursuant to which the Authority has acquired by assignment from the Animas-La Plata Water Conservancy District its interest in the 2,600 acre-feet of municipal and industrial depletions allocated to the Animas-La Plata Water Conservancy District by the 2000 Amendments, and intends to fund the reimbursable share of construction costs allocated to such water, and to market and sell such water in conjunction with the Animas-La Plata Water Conservancy District; and

WHEREAS, the Secretary of the Interior is authorized, through the Bureau of Reclamation, by Federal Reclamation Law and the 2000 Amendments to enter into this Agreement in order to receive payment of the reimbursable share of construction costs of the Animas-La Plata Project properly assigned to the municipal and industrial water allocation for the Animas-La Plata Water Conservancy District under the 2000 Amendments;

NOW THEREFORE, the parties hereto agree as follows:

1. Adjustment of Escrow Account. Within 30 days of the execution of this Agreement the sum of \$35,143,250 will be released from the existing Escrow Account and delivered to the Authority. The sum of \$7,256,750 shall remain in the Escrow Account. At the option of the Authority, the funds remaining in the Escrow Account may consist of any one or more of the following: (a) cash; (b) funds in the Treasurer's Investment Pool of the State Treasurer of the State of Colorado; (c) bonds or other interest bearing obligations of the United States government; (d) direct obligations of federal agencies that are backed by the full faith and credit of the United States; (e) direct obligations of federal agencies that are rated in the highest rating category by one or more nationally recognized organizations that regularly rates such obligations; (f) bank certificates of deposit, money market accounts, or other cash equivalent instruments or investments; and/or (g) such other investments as the Authority has previously authorized for funds in the Escrow Account.

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

3. Fund Investments. The Authority shall have the exclusive right to direct investment of the funds in the Escrow Account. In exercising this right, the Authority may delegate it to the Escrow Agent. Interest on investments, up to 3% per year, shall be credited to the Escrow Account and made available for disbursement as set forth in Paragraph 4(A) below. All interest on investments that exceeds 3% per year (the Segregated Funds) shall be deposited into a segregated account in the Escrow Account, and shall be available for disbursement as set forth in Paragraph 4(B) below.

4. Disbursement of Escrow Funds.

A. Unsegregated Account. Interior shall have the right to withdraw funds from the unsegregated portion of the Escrow Account in accordance with the terms of this Agreement. No funds may be withdrawn from the account on behalf of Interior until the Authority informs the Escrow Agent that each and all of the following prerequisites has been satisfied: (a) the United States Congress has appropriated funds to initiate construction of the Animas-La Plata Project; (b) any and all additional legal prerequisites to the commencement of construction have been satisfied; and (c) commencement of construction has occurred. Except as expressly provided herein, it is the intent of the parties to match advances from the Escrow Account with actual construction costs for the Project to the extent possible. In addition, disbursements will be made for the Authority's repayment obligation of the costs incurred on the project prior to October 1, 1999 (Sunk Costs). To that end, disbursement will be as follows:

(1) Construction Costs. Interior shall provide the Authority and the Escrow Agent with its annual construction schedule no later than August of each year for the following fiscal year beginning October 1. Such schedule will identify the total joint construction costs (Joint Costs) as well as any specific construction costs, up to a maximum of \$582,400, to be expended on items that are being provided solely for the benefit of the Authority (Specific Costs). Disbursements totaling 3.07 % of the estimated Joint Costs and 100% of the Specific Costs for the Ridges Basin Dam, Durango Pumping Plant, Ridges Basin Inlet Conduit, and appurtenant facilities set forth on such schedule for the quarters beginning October 1, January 1, March 1, and June 1 (except as adjusted pursuant to Paragraph 5(A) below) shall be made to Interior ten days prior to the beginning of the relevant quarter. The Escrow Agent will insure that funds are available for such disbursements based upon the construction schedule.

(2) Sunk Costs. In addition, the Escrow Agent will disburse to Interior the sum of \$1,161,197 for Sunk Costs in seven annual equal payments of \$165,885 each commencing one year beyond the date of initiation of construction.

(3) Limitation of Annual Disbursements. The Escrow Agent shall not allow in any one fiscal year the withdrawal of funds from the unsegregated portion of the Escrow Account in

excess of 3.07% of the estimated Joint Costs as set forth on the construction schedule described in subparagraph A; 100% of the appropriate estimated Specific Costs as set forth on the construction schedule described in subparagraph A(1); and \$165,885 for Sunk Costs. The construction schedule may be amended at any time by mutual consent of the parties to reflect changing circumstances. Any such amendment shall be furnished to the Escrow Agent.

B. Segregated Funds. The Segregated Funds, consisting of interest and investment income on the Escrow Account that exceeds 3% per year, shall be available for disbursement only upon and in accordance with the specific instructions of the Authority delivered to the Escrow Agent relating to such Segregated Funds.

5. Reports and Adjustment of Disbursements.

(A) Interior shall prepare and furnish to the Authority and to the Escrow Agent annual reports of the actual construction costs for the facilities of the Project during the previous fiscal year. The report shall be furnished by December 1st following the conclusion of any fiscal year in which escrow funds were withdrawn by Interior. The report shall clearly identify the allocation of any and all disbursements from the Escrow Account, and shall disclose and allocate all payments made for construction of facilities of the Animas-La Plata Project. Disbursement for the next succeeding quarter shall be reduced by the amount, if any, that escrow disbursements pursuant to paragraph 4(A) above in the preceding fiscal year as disclosed by the annual report exceeded 3.07% of the actual Joint Costs and/or 100% of the actual Specific Costs expended for the Ridges Basin Dam, Durango Pumping Plant, Ridges Basin Inlet Conduit, and appurtenant facilities.

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

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

6. Stay of Disbursements. In the event that funds duly appropriated by Congress for construction of the Project are ordered impounded or their expenditure is enjoined by any federal executive or judicial action, order, decision, directive, or the functional equivalent thereof, the Authority shall have the right to direct the Escrow Agent to cease any and all disbursements from the Escrow Account. In such event, the Authority may, at its discretion, approve disbursements from the unsegregated portion of the Escrow Account to Interior in any one fiscal year in an amount not to exceed 3.07% of the Joint Costs and/or 100% of the Specific Costs for that fiscal year for the facilities of the Project, to the extent that disbursements from the fund have not previously been made for that work. If the Authority does not, within six months of ordering cessation of disbursements, deliver written notice to the Escrow Agent that the disbursements may resume, then

this Agreement shall terminate and the Escrow Agent shall return all escrowed funds, including interest thereon to the Authority.

If construction of facilities of the Project ceases for any reason beyond the reasonable control of the parties hereto, including without limitation failure by Congress to appropriate sufficient funds for construction in any fiscal year, the Authority shall have the right to direct the Escrow Agent to cease any and all disbursements from the Escrow Account or, at its discretion to approve disbursements under the same terms and conditions specified in the paragraph above. If the Authority does not, within six months of ordering cessation of disbursements deliver written notice to the Escrow Agent that the disbursements may resume, then this Agreement shall terminate and the Escrow Agent shall return all escrowed funds, including interest thereon to the Authority.

7. Termination.

(A) In the event that any party to the Colorado Ute Indian Water Rights Final Settlement Agreement shall exercise its right to void that Final Agreement, as provided in Article VI, Section C thereof, the Authority shall have the right to terminate this Agreement. Similarly, if in accordance with the provisions of the Consent Decree entered by the District Court in and for Water Division No. 7 in Case No. W-1602-76, the Ute Mountain Ute or Southern Ute Indian Tribe commences litigation of its reserved rights claims from the Animas or La Plata rivers, the Authority shall have the right to terminate this Agreement. The right of the Authority shall be effective immediately upon the provision of notice by the voiding party under the Final Agreement, it being specifically agreed by the parties to this Agreement that this Agreement may be terminated prior to the running of the 60 day notice period provided for voiding the Final Agreement, or upon filing of a petition in the District Court to commence litigation of the reserved rights claims. In such event, the Authority may in its discretion elect to direct the Escrow Agent to cease any and all disbursements from the Escrow Account. Such election, if made, shall not diminish or otherwise affect the right of the Authority as provided elsewhere in this paragraph to terminate this Agreement. Upon notice of such termination by the Authority to the Escrow Agent, the remaining funds in the Escrow Account, including any interest or earnings thereon, shall promptly be paid to the Authority.

(B) This Agreement shall automatically terminate upon (1) the disbursement of sums sufficient to discharge in full the water capital obligation (including the payment in advance of the sum of \$7,256,750 and any additional payment) required to secure the 2,600 acre-feet of average annual municipal and industrial depletion from the Animas-La Plata Project allocated by the 2000 Amendments to the Animas-La Plata Water Conservancy District; (2) the passage of eight years from the date of this Amendment; or (3) the exhaustion of the escrowed funds, whichever occurs first. Upon termination, the Escrow Agent shall promptly remit all remaining escrowed funds, if any, including interest and/or earnings, to the Authority.

(C) Except as otherwise provided herein, this Agreement shall remain in effect until the Escrow Agent shall receive notice of termination in writing from Interior and the Authority.

Upon such termination, the Escrow Agent shall promptly pay the remaining escrowed funds, including interest and/or earnings, to the Authority.


8. Effect of Agreement. This Agreement amends and restates in its entirety, the Agreement and Instruction for Administering Escrow Account entered into by the parties on November 10, 1989, and supercedes and replaces that agreement in full.

9. No Interest. No member of or delegate to Congress, resident, commissioner or official of the Interior or the Authority shall benefit from this contract other than as a water user or land owner in the same manner as other water users or land owners.

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

UNITED STATES DEPARTMENT OF THE
INTERIOR

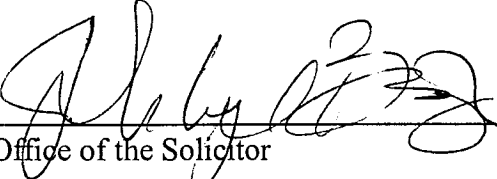
COLORADO WATER RESOURCES AND
POWER DEVELOPMENT AUTHORITY

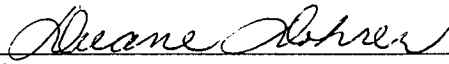
By: 
Regional Director,
Bureau of Reclamation

By: 
Chair

ATTESTATION:

ATTESTATION:

By: 
Office of the Solicitor

By: 
Asst. Secretary