

Last Revised 11/8/91

Contract No. 2-07-10-W0870

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Arrowrock Division, Boise Project, Idaho-Oregon

SUPPLEMENTAL CONTRACT PROVIDING FOR THE TRANSFER OF  
THE BOISE RIVER DIVERSION DAM, TO THE BOISE PROJECT  
BOARD OF CONTROL FOR OPERATION AND MAINTENANCE

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BOARD OF CONTROL FOR OPERATION AND MAINTENANCE

THIS supplemental contract, made this 19th day of  
February, 1992, pursuant to the Acts of Congress of June 17, 1902  
(32 Stat. 388), and August 13, 1914 (38 Stat. 686), and acts amendatory  
thereof and supplementary thereto, hereinafter called the Federal Reclamation  
Laws, by and among the UNITED STATES OF AMERICA, hereinafter called the United  
States, and the BIG BEND IRRIGATION DISTRICT, the BOISE-KUNA IRRIGATION  
DISTRICT, the NAMPA & MERIDIAN IRRIGATION DISTRICT, the NEW YORK IRRIGATION  
DISTRICT, and the WILDER IRRIGATION DISTRICT, hereinafter called the  
Districts, and the BOISE PROJECT BOARD OF CONTROL, the operating agency of the  
Districts, hereinafter called the Board of Control,

WITNESSETH THAT:

Explanatory Recitals

2. WHEREAS, under the provisions of existing contracts between the  
United States and each of the Districts, the United States has turned over to  
the Districts for operation and maintenance, certain portions of the Arrowrock  
Division, Boise Project, including the main canal (also known as the New York  
Canal) starting at the Boise River Diversion Dam, all the division canals,

Recital 2

laterals, and sublaterals of said main canal system, Deer Flat Reservoir, the canals and laterals receiving water from Deer Flat Reservoir, and all drainage canals of said Arrowrock Division, and has retained other project facilities, including Arrowrock Dam and Reservoir, the Boise River Diversion Dam and powerplant, and Anderson Ranch Dam and Reservoir and powerplant. Facilities turned over to the Districts are termed transferred works, while facilities retained by the United States are termed reserved works, and

3. WHEREAS, under the contract of January 24, 1990, the section of the main canal immediately below the Boise River Diversion Dam, to a point approximately one-half mile downstream, was transferred from the United States to the Board of Control for care, operation, and maintenance.

4. WHEREAS, it is the desire of the United States and the Districts that the Boise River Diversion Dam including the irrigation headworks, sluice gates, roller gate, and housing facilities, currently a reserved works of the United States, be transferred to the Districts for operation and maintenance.

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

Definitions

5. The following terms, whenever used in this contract, shall have the following respective meanings:

(a) "Project Superintendent" shall mean the Project Superintendent of the Central Snake Projects Office in the Pacific Northwest Region of the Bureau of Reclamation.

Recitals 3, 4  
Article 5

(b) "Reclamation Regional Archeologist" shall mean the Reclamation staff person in the Pacific Northwest Region of the Bureau of Reclamation responsible for implementing the cultural resource management program. Such person shall be responsible for the technical evaluation of the effect of proposed actions and activities on the historical integrity of the structure or site under study, and is responsible for legally mandated consultations with the State Historic Preservation Officer and the Advisory Council on Historic Preservation.

(c) "State Historic Preservation Officer" shall mean the State of Idaho official designated to implement the National Historical Preservation Act of 1966, as amended, for matters in Idaho. The State Historic preservation Officer is responsible to comment on the effects of proposed actions and activities on historical sites and property within the State of Idaho, and to consult with affected entities to minimize or avoid adverse effects.

(d) "Advisory Council on Historic Preservation" shall mean the Federal agency responsible for promulgating regulations for cultural resource protection and management; coordinating activities of Federal, State, and local agencies, and private institutions relating to historic preservation; and is responsible for providing comment to Federal and State agencies on proposed undertakings that affects historic properties.

Works Transferred

6. (a) The contract between the United States and the Boise-Kuna Irrigation District dated March 20, 1926, and the contract between the United States and the Nampa & Meridian Irrigation District dated March 2, 1926, and the contract between the United States and the New York Irrigation District dated September 27, 1926, and the contract between the United States and the Big Bend Irrigation dated March 25, 1926, and the contract between the United States and the Wilder Irrigation District dated April 6, 1926, as supplemented by the contract of January 24, 1990, between the United States and the Boise Project Board of Control are hereby amended by adding to the article entitled "Works Transferred" the following :

"Effective December 1, 1991, the Boise River Diversion Dam, including the irrigation headworks, sluice gates, roller gate, and housing facilities is hereby transferred from the United States to the Board of Control for care, operation, and maintenance."

(b) Housing facilities shall include the area known as the dam tenders quarters or housing quarters, but shall exclude the area below the housing facilities known as the drill crew compound used by Reclamation as a storage and staging area.

Operation and Maintenance of Certain Works Retained  
by United States - Operation and Maintenance of  
Boise River Diversion Dam

7. (a) Contracts specified in article <sup>6</sup>8 of this contract are also hereby amended by adding to the article entitled "Operation and Maintenance of Certain Works Retained by United States - Payment by Board of a Pro Rate Share

of Costs of Operation and Maintenance of Retained Works," the following:

"Arrowrock Dam and Reservoir, the Boise River Diversion Dam powerplant, and Anderson Ranch Dam and Reservoir and powerplant shall continue to be reserved works and retained for operation and maintenance by the United States. Subject to the provisions in Article 7 (b) the Districts assume all costs of operation and maintenance of the Boise River Diversion Dam including the irrigation headworks, sluice gates, roller gate, and housing facilities so transferred to the Board of Control from the United States on December 1, 1991. Water, to lands so entitled, will be delivered by the United States to the Board of Control, as the operating agent of the Districts, at the point immediately on the upstream side of the Boise River Diversion Dam."

(b) When the Diversion Dam powerplant is operated by Reclamation, Reclamation will reimburse the Boise Project Board of Control for fifty percent (.50) of the average daily operation and maintenance cost of the Diversion Dam including the roller gates and sluice gates, but excluding any operation and maintenance cost of the irrigation headworks and housing facilities. The reimbursement amount shall be determined based on fifty percent of the estimated annual operating cost multiplied by the quotient of the number of days the powerplant is operated, divided by 365 (.50 x estimated annual operating cost x (number of days the powerplant is operated / 365)). Any portion of a 24 hour day the powerplant is operated shall constitute one day.

Article 7 continued

Compliance with Regulations: Cultural Resource Requirements

8. (a) The Board of Control agrees to operate the transferred works in full compliance with any regulations or orders heretofore or hereafter issued by the Secretary of the Interior.

(b) As the Boise River Diversion Dam is listed on the National Register of Historic Places, and the dam tenders quarters may be eligible for listing on the National Register, the Board of Control shall comply with provisions of the National Historic Preservation Act of 1966 (Public Law 89-665), as amended, and with Department of the Interior regulations, to insure, protect, and maintain the historical integrity of the transferred works.

In accordance with procedures in the Code of Federal Regulations (Title 36- Part 800) the Board of Control shall notify and consult with Reclamation, as represented by the Project Superintendent or designee. The Board of Control shall notify the Project Superintendent no less than 6 months in advance of the start of any activity or action that could change the physical appearance of the dam, remove or change associated equipment, or insert new elements in the historic landscape. The Board of Control shall provide any drawings or description of the proposed action.

(c) Upon notification from the Board of Control to the Project Superintendent, and in accordance with provisions in the Code of Federal Regulations (Title 36, part 800) the Reclamation Regional Archeologist will consult with the State Historic Preservation Officer and the Advisory Council

on Historic Preservation to determine if the proposed action or activity will adversely effect the historic integrity of the Boise River Diversion Dam. The Boise Project Board of Control will be invited to participate in the consultations.

If after consultation, the Reclamation Regional Archeologist determines that the proposed action or activity is damaging to the historic integrity of the transferred works, Reclamation will:

- (1) Deny permission to execute the activity or action, or;
- (2) Consult with the Board of Control to modify the proposed activity or action so as to reduce or avoid the damaging effect, or;
- (3) Require historic documentation or other mitigative action to offset the adverse effect. The Board of Control shall be responsible for the costs of historical documentation and mitigation.

(d) The Board of Control shall maintain public access to the interpretative facilities in the powerhouse.

#### Rights Retained by the United States

9. (a) The United States retains the right of access to the transferred works for all project purposes.

(b) The United States retains all rights to power development at the Boise River Diversion Dam. Such rights shall include the right to construct new power facilities, rehabilitate existing power facilities, and right-of-way for penstocks, powerplants, and switchyards, roads, and other related equipment.

(c) By signing this contract, the Districts do not intend to give up any rights they may have including the right to petition Congress to change existing law.



(d) The United States retains title to all transferred works as described in Article 6.

Previous Contracts To Remain In Effect

10. This contract is supplementary to the contracts being amended, and those contracts, as well as other existing agreements among the parties hereto, are to remain in full force and effect except as herein specifically amended.

General Provisions

11. The General Provisions which are applicable to this contract but not applicable to the contracts hereby supplemented and amended, except as specifically provided herein, are listed below and the full text of such provisions are attached as Exhibit A and to that extent made a part of the contract.

- a. Notices
- b. Contingent on Appropriation or Allotment of Funds
- c. Officials Not to Benefit
- d. Assignment Limited -- Successors and Assigns Obligated
- e. Equal Opportunity
- f. Compliance with Civil Rights Laws and Regulations
- g. Quality of Water
- h. Water and Air Pollution Control

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

UNITED STATES OF AMERICA

By John W. Keyser, III  
Regional Director, PN Region  
Bureau of Reclamation  
Box 043 - 550 West Fort Street  
Boise, Idaho 83724-0043

(SEAL)

BIG BEND IRRIGATION DISTRICT

Attest: Elma Hitty  
Secretary

By Dick Bennett  
President

(SEAL)

BOISE-KUNA IRRIGATION DISTRICT

Attest: E. Faye Russell  
Secretary

By Carl H. Roman  
Chairman

(SEAL)

NAMPA-MERIDIAN IRRIGATION DISTRICT

Attest: Doreen A. Coon  
Secretary

By Kenne Hink  
President

(SEAL)

NEW YORK IRRIGATION DISTRICT

Attest: Barbara Ode  
Secretary

By L. L. Murgatorio  
Chairman

(SEAL)

WILDER IRRIGATION DISTRICT

Attest: Dorena M. Young  
Secretary

By Thomas E. Orsey  
President

(SEAL)

BOISE PROJECT BOARD OF CONTROL

Attest: Janette A. Scholl  
Secretary

By L. L. Margolis  
Chairman

STATE OF IDAHO )  
 : ss )  
County of Ada )

On this 19<sup>th</sup> day of February, 1992, personally

appeared before me John W. Keys, III, to me known to be the official of the United States of America that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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

Diana L. Jacobs

Notary Public in and for the  
State of Idaho  
Residing at Boise

(SEAL)

My commission expires: 5-23-94

\*\*\*\*\*

STATE OF OREGON )  
 : ss )  
County of MAHEUR )

On this 38<sup>th</sup> day of JANUARY, 1992, before me,

SYLVIA HIGINBOTHAM, a Notary Public, personally appeared

DICK BENNETT, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that HE executed the same.

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

Sylvia Higinbotham

Notary Public in and for the  
State of Oregon  
Residing at ONTARIO, OREGON

(SEAL)

My commission expires: 12-5-92

STATE OF IDAHO )  
 : ss  
County of Ada )

On this 23<sup>rd</sup> day of January, 1992, before me,  
Jessith A. Scholl, a Notary Public, personally appeared  
Carl German, known to me to be the person  
whose name is subscribed to the within instrument and acknowledged to me that  
he executed the same.

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

Jessith A. Scholl  
Notary Public in and for the  
State of Idaho  
Residing at Wilder, ID

(SEAL)

My commission expires: 6-9-97

\* \* \* \* \*

STATE OF IDAHO . )  
 : ss  
County of Ada )

On this 23<sup>rd</sup> day of January, 1992, before me,  
Jessith A. Scholl, a Notary Public, personally appeared  
Henry Weick, known to me to be the person  
whose name is subscribed to the within instrument and acknowledged to me that  
he executed the same.

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

Jessith A. Scholl  
Notary Public in and for the  
State of Idaho  
Residing at Wilder, ID

(SEAL)

My commission expires: 6-9-97

STATE OF IDAHO )  
County of Ada ) : ss

On this 23 day of January, 1992, before me,  
Charlene Orr, a Notary Public, personally appeared  
L. L. Mueggen, known to me to be the person  
whose name is subscribed to the within instrument and acknowledged to me that  
he executed the same.

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

Charlene Orr  
Notary Public in and for the  
State of Idaho  
Residing at Caldwell

(SEAL)

My commission expires: 10-14-94

\*\*\*\*\*

STATE OF IDAHO )  
County of Ada ) : ss

On this 15<sup>th</sup> day of January, 1992, before me,  
Janith A. Scholl, a Notary Public, personally appeared  
Thomas C. Dorsey, known to me to be the person  
whose name is subscribed to the within instrument and acknowledged to me that  
he executed the same.

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

Janith A. Scholl  
Notary Public in and for the  
State of Idaho  
Residing at Wilder, ID

(SEAL)

My commission expires: 6-9-97



GENERAL PROVISIONS

The Contractor, as referred to in the following General Provisions, shall be the Boise Project Board of Control

NOTICES

A. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Contractor when mailed, postage prepaid, or delivered to the Regional Director, PN Region, Bureau of Reclamation, Box 043 - 550 West Fort Street, Boise, Idaho 83724-0043, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Manager of the Contractor, 214 Broadway, Boise, Idaho 83702. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

OFFICIALS NOT TO BENEFIT

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

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

EQUAL OPPORTUNITY

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

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

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

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

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



(5) The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the United States and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the such rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in 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.

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

#### COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

F. (1) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 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.

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

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

#### QUALITY OF WATER

G. The operation and maintenance of project facilities transferred to the Contractor shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities in as high a level as the same is delivered to the Contractor. Neither party hereby warrants the quality of water and neither party under the provisions of this contract assumes any obligation to construct or furnish water treatment facilities to maintain or better the quality of water except as herein specifically provided.

#### WATER AND AIR POLLUTION CONTROL

H. The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Idaho, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.