

**CONTRACT BETWEEN SAN JUAN WATER COMMISSION AND  
LA PLATA CONSERVANCY DISTRICT CONCERNING  
THE DISTRICT'S ANIMAS-LA PLATA PROJECT WATER**

THIS CONTRACT is hereby made this 31<sup>ST</sup> day of December, 2008, between the SAN JUAN WATER COMMISSION (hereinafter referred to as the "COMMISSION"), located in San Juan County, New Mexico, a political subdivision of the State of New Mexico duly organized under the Joint Powers Agreement dated March 5, 1986, pursuant to the laws of San Juan County and the State of New Mexico, and LA PLATA CONSERVANCY DISTRICT (hereinafter referred to as the "DISTRICT"), located in San Juan County, New Mexico, a conservancy district duly incorporated and existing pursuant to the Decree Incorporating La Plata Conservancy District, dated August 5, 1946, by the District Court in San Juan County, and the laws of San Juan County and the State of New Mexico, acting through the officer executing this Contract.

WITNESSETH, That:

WHEREAS, the following statements are made in explanation:

1. Public Law 106-554 authorized construction of the Animas-La Plata Project (hereinafter referred to as the "PROJECT"), allocated water to certain entities, including 780 acre-feet per year of depletions (1,560 AFY of diversions) to the DISTRICT in New Mexico, and established certain payment obligations to the Federal Government for each entity to which PROJECT water is allocated.

2. The COMMISSION and the DISTRICT recognize that the DISTRICT is unable to raise the required funds to meet the DISTRICT'S payment obligation to the Federal

Government for PROJECT construction costs of approximately \$4.9 million because of the DISTRICT'S limited resource/revenue base.

3. The COMMISSION and the DISTRICT recognize that non-payment of the DISTRICT'S payment obligation for the PROJECT could lead to the forfeiture of the DISTRICT'S participation in the PROJECT and the loss of the water allocated under Public Law 106-554.

4. The DISTRICT has filed an application with the New Mexico Water Trust Board to help pay its payment obligation to the Federal Government for PROJECT construction costs, which application requires a 10-20% "hard" local-match contribution.

5. The COMMISSION and the DISTRICT recognize that the DISTRICT is unable to raise the required funds to meet the New Mexico Water Trust Board's requirement of a 10-20% "hard" local-match contribution before contracts have been executed for purchase of the DISTRICT'S PROJECT water.

6. The COMMISSION and the DISTRICT recognize that the DISTRICT also is unable to meet the DISTRICT'S operation, maintenance and replacement ("OM&R") PROJECT costs until the PROJECT water is contracted for and put to beneficial use, which may be several years in the future.

7. The COMMISSION and the DISTRICT recognize that New Mexico and, in particular, San Juan County, cannot afford to risk losing the right to use any quantity of water, including the DISTRICT'S PROJECT water.

8. The COMMISSION and the DISTRICT recognize that it is imperative for the DISTRICT to preserve its historical position in the PROJECT in order to protect New Mexico interests in the PROJECT.

9. The COMMISSION and the DISTRICT recognize that the DISTRICT'S PROJECT water allocation can provide the DISTRICT, the Upper La Plata Water Users Association, the Lower Valley Water Users Cooperative Association and other San Juan Water Commission Members much-needed additional assured long-term water supplies at an established cost to meet the demands of a growing population base. The COMMISSION and the District agree that one purpose of this Contract is to ensure beneficial use of the water until it is needed by people living in or near the District, including but not limited to the Upper La Plata Water Users Association and Lower Valley Water Users Cooperative Association, and that ultimately, when needed, the water will be available to the people living in or near the District.

10. The COMMISSION and the DISTRICT are willing to commit to this negotiated arrangement whereby the COMMISSION agrees to advance the DISTRICT'S capital and OM&R PROJECT costs, as needed, to secure the PROJECT water until contracts have been executed for the DISTRICT'S PROJECT water allocation. At such time as all or part of the DISTRICT'S PROJECT water allocation is contracted for use and the DISTRICT receives revenue from the contracts, the DISTRICT will repay the COMMISSION all costs advanced by the COMMISSION, plus interest, as agreed herein.

11. The COMMISSION previously has negotiated two PROJECT contracts with the Federal Government, and the DISTRICT recognizes the COMMISSION'S expertise in negotiating PROJECT contracts with the Federal Government. Because of the COMMISSION'S

contract experience, and the COMMISSION'S advancement of PROJECT costs on behalf of the DISTRICT, the DISTRICT agrees that the COMMISSION shall participate in negotiating the DISTRICT'S contract with the Federal Government. All contract terms negotiated by the COMMISSION must be approved by the DISTRICT before they are incorporated into the final PROJECT contract.

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, the COMMISSION and the DISTRICT agree as follows:

1. The COMMISSION will advance the DISTRICT'S PROJECT capital and OM&R costs for payment to the Federal Government as needed to secure the PROJECT water until the DISTRICT receives revenue from its PROJECT water allocation through third-party water supply contracts. The COMMISSION'S advance of PROJECT capital costs shall constitute the "hard" local-match contribution required by the Water Trust Board.

2. The COMMISSION shall participate in negotiating the DISTRICT'S PROJECT contract with the Federal Government.

3. The DISTRICT must approve all contract terms negotiated before they are incorporated into the final PROJECT contract. The DISTRICT shall approve and execute the final PROJECT contract with the Federal Government as soon as practicable.

4. At such time as the DISTRICT receives revenue from its PROJECT water allocation from third-party water supply contracts, the DISTRICT will begin to repay the COMMISSION all capital and OM&R PROJECT costs advanced by the COMMISSION, plus simple interest calculated at the rate of two percent (2%) per year. The total of the costs advanced by the COMMISSION plus interest shall be the "BALANCE DUE."

5. The DISTRICT'S repayment of capital and OM&R costs advanced by the COMMISSION shall be paid as follows:

a. All revenue received by the DISTRICT shall first be used to pay current OM&R charges for the PROJECT.

b. The COMMISSION shall next be paid ten percent (10%) of the gross revenue for its overhead expenses associated with contract administration.

c. Until the BALANCE DUE is paid off, any remaining revenue shall be split equally between the DISTRICT and the COMMISSION, with the COMMISSION'S share being credited toward the DISTRICT'S BALANCE DUE, provided that the District may elect to pay more toward the BALANCE DUE. After the BALANCE DUE has been paid, the DISTRICT shall receive any remaining revenue.

6. The COMMISSION shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including all funds advanced by the COMMISSION on behalf the DISTRICT and interest accrued. The records shall be made available to the DISTRICT upon reasonable request, and the COMMISSION shall make reports at least quarterly to the DISTRICT on its accounts.

7. Among other services provided in exchange for the compensation described in 5 b above, The COMMISSION shall establish and maintain a billing system, accounts and other books and records pertaining to the beneficial use of the DISTRICT'S PROJECT water allocation, including revenue received from the DISTRICT'S third-party water supply contracts. The COMMISSION also shall provide other services, as needed, to help maximize the use of the DISTRICT'S water, including but not limited to engineering, legal and administrative services.

8. This Contract shall remain in effect, and the Commission shall administer all of the DISTRICT'S third-party water supply contracts, until the DISTRICT has reimbursed the COMMISSION for its BALANCE DUE, and so long thereafter as the COMMISSION agrees to continue administering the DISTRICT'S third-party water supply contracts.

9. If the DISTRICT desires to contract with third parties who are not COMMISSION members, the COMMISSION and its member entities have a right of first refusal to contract for the DISTRICT'S PROJECT water.

10. Any contract to be administered by the COMMISSION that is entered into between the DISTRICT and any third-party for the beneficial use of all of any part of the DISTRICT'S PROJECT water allocation shall be subject to the written approval of the COMMISSION. At a minimum, such contract shall require the following:

a. The third-party must pay its contracted share of PROJECT OM&R costs to the COMMISSION in advance of the date OM&R costs are due;

b. The contract shall meet all terms required by the contract between the DISTRICT and the Federal Government; and

c. Payments for the use of the DISTRICT'S PROJECT water shall be made directly to the COMMISSION.

The COMMISSION'S approval of the DISTRICT'S third-party water supply contracts shall not be unreasonably withheld. The COMMISSION shall have 60 days after receipt of a proposed third-party contract to inform the DISTRICT of its approval or denial of the contract.

11. Once the COMMISSION and the DISTRICT mutually determine that the people living in or near the District need the DISTRICT'S water, and so long as the DISTRICT'S existing third-party water supply contracts have expired, the DISTRICT shall enter into good faith negotiations with any COMMISSION member serving people in or near the DISTRICT for the needed water, including but not limited to the Upper La Plata Water Users Association or Lower Valley Water Users Cooperative Association.

12. If any provision of this Contract shall, for any reason, be determined to be illegal or unenforceable and does not materially alter the intent of the Contract, the COMMISSION and the DISTRICT nevertheless intend for the remainder of the Contract to remain in full force and effect.

13. The provisions of this Contract shall apply to and bind the successors and assigns of the COMMISSION and the DISTRICT, but no assignment or transfer of this Contract or any right or interest therein by either the COMMISSION or the DISTRICT shall be valid until approved in writing by the other party.

14. This Contract has been drafted, negotiated, and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party shall be considered to have drafted the Contract.

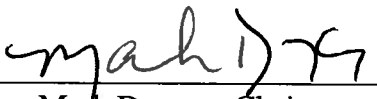
15. In any action between the COMMISSION and the DISTRICT seeking enforcement of any of the terms and provisions of this Contract, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, including reasonable attorneys' fees.

16. This Contract merges all previous negotiations between the parties hereto and constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof. No alteration, modification, or amendment hereto shall be valid except when in writing and when signed by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed as of the day and year first above written.

Approved:

SAN JUAN WATER COMMISSION,  
NEW MEXICO

By:   
Mark Duncan, Chairman

APPROVED AS TO FORM  
SAN JUAN COUNTY ATTORNEY

BY: 

LA PLATA CONSERVANCY DISTRICT,  
NEW MEXICO

By:   
Stella Montoya, President