

(FST090870)

C O N T R A C T

between the

UNITED STATES OF AMERICA

and the

POJOAQUE VALLEY IRRIGATION DISTRICT

SAN JUAN-CHAMA PROJECT

NEW MEXICO

Contract No. 14-96-500-1986

(FST090870)

CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND THE
POJOAQUE VALLEY IRRIGATION DISTRICT

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(FST100570)

Contract No. 14-06-500-1986

SAN JUAN-CHAMA PROJECT
NEW MEXICO
POJOAQUE TRIBUTARY IRRIGATION UNIT

CONTRACT

Between the

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

AND THE

POJOAQUE VALLEY IRRIGATION DISTRICT
for
An Irrigation Water Supply

THIS CONTRACT, made this 30th day of October, 19 72,
between the UNITED STATES OF AMERICA, hereinafter styled the United
States, acting through the Secretary of the Interior, and pursuant to
the Federal Reclamation Laws, including particularly the Act of June 13,
1962 (76 Stat. 96), and the Act of April 11, 1956 (70 Stat. 105), all
as amended or supplemented, and the POJOAQUE VALLEY IRRIGATION DISTRICT,
a body corporate and political subdivision of the State of New Mexico,
having its principal office in the town of Pojoaque, State of New Mexico.

WITNESSETH THAT:

WHEREAS, the Act of Congress approved June 13, 1962 (76
Stat. 96), authorizes the Secretary of the Interior to construct,
operate, and maintain the initial stage of the San Juan-Chama project
as a participating project of the Colorado River Storage project; and

WHEREAS, the San Juan-Chama project is approved for furnishing
water supplies to the Pojoaque tributary irrigation unit and for other
beneficial purposes; and

WHEREAS, the District desires to contract with the United
States to acquire a supplemental supply of water to be used for the
irrigation of irrigable and arable lands and desires to contract for
operation and maintenance of the Pojoaque tributary unit of the project
in accordance with Reclamation Law; and

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WHEREAS, there is within the exterior boundaries of the District, real property owned by the Pueblos of Nambe, Pojoaque, and San Ildefonso, which property and appurtenant rights are subject to the Act of Congress of July 1, 1932, 25 U.S.C.A. 386a (Leavitt Act); and

WHEREAS, the District is vested with all necessary powers for accomplishment of the purposes of this contract;

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

DEFINITIONS

1. Where used in this contract, the term:

a. Contracting Officer - means the Secretary of the United States Department of the Interior or his duly authorized representative.

b. Federal Reclamation Laws - means the Act of June 17, 1902 (32 Stat. 388), and all acts amendatory thereof or supplementary thereto.

c. District - means the Pojoaque Valley Irrigation District, an irrigation district duly created under the laws of the State of New Mexico, acting through its board of directors.

d. Project - means the initial stage of the San Juan-Chama project, New Mexico, as authorized by the Act of Congress dated June 13, 1962 (76 Stat. 96).

e. Pueblos - means the Pueblos of Nambe, San Ildefonso, and Pojoaque.

f. Pojoaque Tributary Irrigation Unit or Unit - means the Nambe Falls Dam and Reservoir and appurtenances.

g. Unit Works or Unit Facilities - means Nambe Falls Dam and Reservoir and all works or facilities constructed in connection therewith including outlet works, together with land and rights-of-way for such works, but excluding recreation facilities and use thereof.

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h. Unit Water - means water available for use through the unit works.

i. Irrigation Water Supply - means that portion of the unit water supply to be used or disposed of exclusively for the irrigation of irrigable and arable lands.

j. Construction Costs - means actual costs incurred constructing the unit and related facilities, including overhead and administration.

k. Water Supply Costs - means that portion of project costs payable by the District to the United States for the water supply allocated to it from the project.

l. Operation and Maintenance - means and includes normal and reasonable care, control, operation, maintenance, and replacement of the reservoir storage complex and the unit works.

m. Year - means the period January 1 through the next following December 31.

n. Reservoir Storage Complex - means all features, lands, and rights-of-way of the project directly associated with the initial collection and storage of project water, and includes all works from the enlargement of the outlet of the existing El Vado Dam upstream to and including and connecting the three diversion dams on the Rio Blanco, Little Navajo, and Navajo Rivers.

PROJECT PLAN

2. a. The initial stage of the project is designed to furnish an average of 101,800 acre-feet of water annually at the outlet of Heron Dam from the natural flow of the Rio Blanco, Little Navajo, and Navajo Rivers in Colorado for use in the Rio Grande Basin in New Mexico. The principal engineering works of the project will involve three major elements and shall include: (1) Diversion. Three dams for diversion of natural flows from the Rio Blanco, Little Navajo, and Navajo Rivers with feeder conduits and the main conduit; (2) Regulation. Storage and regulation facilities at the Heron Reservoir on Willow Creek and enlargement of the outlet works of the existing El Vado Dam on Rio Chama; and (3) Water Use. To provide the city of Albuquerque

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with additional water for municipal purposes; to provide supplemental water for irrigation of irrigable land in the Middle Rio Grande Conservancy District; to replace depletions of the flow of the Rio Grande by constructing reservoirs, dams, canals, laterals, furnishing a firm water supply to land in tributary irrigation units.

b. The Pojoaque Tributary Irrigation Unit will consist of construction of Nambe Falls Dam and Reservoir and appurtenances to provide storage regulation to serve water right lands lying along the Rio Nambe and the Pojoaque River. In addition to irrigation benefits, there will be benefits to fish and wildlife and recreation.

ALLOCATION OF UNIT CONSTRUCTION COSTS

3. a. The estimated cost of constructing the Pojoaque Tributary Irrigation Unit including allocable reservoir storage complex costs is \$3,442,600, consisting of the following:

(1) Nambe Falls Dam and Reservoir-----	\$ 2,786,500
(2) General property-----	17,500
(3) Recreation facilities-----	40,000
Subtotal-----	\$ 2,844,000
(4) Allocable reservoir storage complex costs-----	\$ 598,600
TOTAL	\$ 3,442,600

b. The estimated costs of construction have been allocated as follows:

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(1) Irrigation

a. Reimbursable based on ability of
water users to pay-----\$ 285,000 .

- 1. Indian land allocation-----\$100,000
- 2. Non-Indian land allocation-----\$185,000

b. Reimbursable by Colorado River Storage

Project revenues-----\$ 2,647,100
Subtotal (reimbursable)-----\$ 2,332,100

(2) Fish and Wildlife - Nonreimbursable----\$447,500

(3) Recreation - Nonreimbursable-----\$ 40,000

(4) Colorado River Development Fund

Nonreimbursable-----\$ 23,000
Subtotal (nonreimbursable)-----\$ 510,500
TOTAL \$ 3,442,600

COST OF UNIT WORKS

4. Subject to the terms and conditions of this contract and within the limitation of funds made available by the Congress, the United States will spend on construction of the unit works including the acquisition of land not to exceed \$2,844,000 plus or minus such amounts as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the type of construction involved herein, or so much thereof as in the opinion of the contracting officer is necessary.

DISTRICT WATER USE RIGHTS

5. So long as obligations of the District set forth in this contract are currently paid, the District shall be entitled to store in Navajo Falls Reservoir for irrigation use the amount of water determined by the contracting officer to be available during each year or during specific seasons. It is estimated that the average annual water supply available for diversion will be 8,150 acre-feet, and that the resulting new depletions will average 1,030 acre-feet, to be replaced by project water. Nothing in this contract shall be construed as authorizing or permitting the impairment or adverse effect to the use of Rio Navajo waters under water rights existing at the time of this contract.

CONSTRUCTION COMPLETION NOTICE

6. When expenditures on construction have been made as provided in Article 4, or so much thereof as the contracting officer considers necessary and useful for construction of the unit works, the contracting officer may issue the construction completion notice required for establishing the year in which the first annual payment by the District on its reimbursable construction cost obligation shall be made.

DISTRICT CONSTRUCTION COST OBLIGATION

7. In consideration of the District's right upon completion of construction to utilize the unit works and the unit water supply, the District is obligated to pay the United States that portion of the total construction cost determined by the contracting officer to be the repayment capacity of the lands to be provided with a unit water supply. It is hereby determined that the repayment capacity of the District and the Pueblos is \$285,000. That portion of the repayment capacity constituting a cost allocated against the Pueblo lands, totaling \$100,000, is hereby deferred; and no payment shall be required to be made by the District on such charges unless and until the Indian title thereto shall have been extinguished. In the event of an adjudication of water rights or other court decision making it necessary to reallocate the annual water supply between Pueblo lands and District lands on a basis other than 33.92 percent for use on Pueblo lands, then the \$285,000 shall be reallocated between Pueblo lands and the District accordingly. Charges allocated for repayment by the District totaling \$185,000 (or the adjusted amount in the event of reallocation) shall be paid in fifty (50) consecutive equal annual installments, which installments shall be payable on August 1 of each year. No interest is required to be paid. The first payment shall become due on August 1 of the year next succeeding the final year of the development period. In the event that all or any part of the Pueblo lands shall have the Indian title thereto extinguished, then payments appropriately apportioned against said lands shall be paid in amounts determined by the contracting officer, with such installments to commence on August 1 of the year following the year in which the Indian title is extinguished.

DEVELOPMENT PERIOD

8. A development period will be required to adjust the economy of the District area to one making full use of the unit water

supply. Said development period, for a term of not less than five (5) years, and not exceeding ten (10) years, as determined by the contracting officer, shall commence with the calendar year following that in which the unit works are completed and water is determined to be available for use as contemplated by the project plan and announced by the contracting officer.

OPERATION AND MAINTENANCE OF RESERVOIR STORAGE COMPLEX
BY UNITED STATES

9. a. The United States will operate and maintain the reservoir storage complex. Through the year in which the reservoir storage complex is completed as announced by the contracting officer, operation and maintenance costs shall be included as a part of construction costs. After completion of the reservoir storage complex, operation and maintenance expenses will be allocated among project water users according to the amount of water contracted for in relation to the total project water supply under contract. Notice will be issued annually to the District on or before May 1 of the year preceding the year to which the notice applies of its share of the costs of operation and maintenance of the reservoir storage complex. Said notice shall show an itemization of the estimated reimbursable operation and maintenance costs of the reservoir storage complex. When all project water has been committed to use by contract, the District's operation and maintenance costs under this article shall be one (1%) percent of reservoir storage complex expenses. To the extent the District may require water in excess of its allocations under this contract, it shall be entitled to share any uncommitted project water by negotiating a contract with the United States for payment of costs associated therewith, all as determined by the contracting officer. The District will advance its share of reservoir storage complex operation and maintenance costs for each calendar year as follows:

- (1) One-fourth on or before December 31 of the preceding year.
- (2) One-fourth on or before March 10 of the year to which applicable.
- (3) One-fourth on or before May 10.
- (4) One-fourth on or before August 30.

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In the event reservoir storage complex operation and maintenance cost estimates fail to equal the actual costs in any period, or whenever it is anticipated by the contracting officer that a deficit will occur during the year, supplemental notices may be issued by the contracting officer requesting additional funds or revising the charges payable for the remaining periods covered by the above dates. Funds not spent during one calendar year will be carried over for use during the next calendar year with funds required for that year reduced accordingly, and an itemized statement of actual costs incurred during the year shall be furnished to the District.

b. The contracting officer will make an annual determination of operation and maintenance costs of the reservoir storage complex that are assignable to fish and wildlife and recreation purposes. To the extent Federal appropriations for this purpose are available to the United States, funds to cover costs assigned to fish and wildlife and recreation purposes will be credited on operation and maintenance costs.

OPERATION AND MAINTENANCE OF UNIT WORKS

10. a. Upon substantial completion of the unit works, or as otherwise determined by the contracting officer, and following written notification, the care, operation, and maintenance of any or all of the unit works shall be transferred to the District.

b. The District, without expense to the United States, shall care for, operate, and maintain such unit works in full compliance with the terms of this contract, and in such manner that said unit works shall remain in good and efficient operating condition.

c. The District shall, during the period any or all of the unit works are being operated by it, pay to the United States following the receipt of a detailed cost statement, such specific items of direct cost including overhead, as are incurred by the United States. No such costs shall be incurred by the United States without advance agreement with the District.

d. The contracting officer will make an annual determination of operation and maintenance costs of the unit works that are assignable to fish and wildlife and recreation purposes. To the extent

Federal appropriations for this purpose are available to the United States, funds to cover costs assigned to fish and wildlife and recreation purposes will be advanced to the District.

e. The District shall promptly make any and all repairs to the unit works being operated by it that are necessary for the proper care, operation, and maintenance of the same. In case of neglect or failure of the District to make such repairs within sixty (60) days following written notification, the contracting officer may cause the repairs to be made, and the cost thereof shall be paid by the District as prescribed by the United States.

f. No substantial change shall be made by the District in the unit works without first obtaining the written consent of the contracting officer.

g. The District shall hold the United States, its officers, agents, and employees harmless as to any and all damages that may in any manner grow out of the care, operation, and maintenance of any of the unit works after transfer to the District: Provided however, That this provision shall not be construed as relieving the United States of its obligations pursuant to the Federal Tort Claims Act (28 U.S.C. §2671-§2680).

h. In the event the District is found to be operating the works or any part thereof in violation of this contract, then at the election of the contracting officer the United States may take over from the District the care, operation, and maintenance of the works heretofore transferred to the District by giving written notice to the District of such election and of the effective date thereof. Thereafter, during the period of operation by the United States, the District shall pay to the United States annually in advance the cost of operation and maintenance of such works as prescribed in notices from the contracting officer to the District. Such works may be retransferred to the District in the manner originally transferred.

RESERVE FUND

11. Commencing with the sixth year following the year the District assumes operation and maintenance of the unit works and continuing until such time as all sums of money becoming due hereunder shall have been paid to the United States, the District shall accumulate and maintain a reserve fund which will be available for use in the

manner, for the purposes, and in the circumstances hereinafter set forth. Such reserve fund shall consist of annual deposits by the District of not less than two thousand dollars (\$2,000) to a special account created by the District for the purpose. Such annual deposits shall continue until the amount in the reserve fund is not less than sixteen thousand dollars (\$16,000). Expenditures shall be made from such reserve fund only for meeting major unforeseen extraordinary costs of operation and maintenance, repair, betterment and replacement of unit works, and for operation and maintenance during periods of special stress, such as may be caused by drought, hurricane storms, or other like emergencies. Whenever said reserve fund is reduced below sixteen thousand dollars (\$16,000) by expenditures therefrom, it shall be restored by the accumulation of annual deposits of two thousand dollars (\$2,000) commencing with the next year following that in which the fund is reduced below said amount. During any period in which any of the unit works are operated and maintained by the United States, such fund shall be available for like use by the United States. At the option of the District, the reserve fund may be invested to the extent permitted by law, provided that such reserve fund may be available within a reasonable time to meet the expenses for the purpose for which it was accumulated: Provided, That upon mutual agreement said fund and the annual installments may be adjusted to reflect the addition, deletion, or changes in unit facilities and operation and maintenance costs not contemplated when this contract was executed.

INDIAN LANDS

12. Nothing in this contract shall be construed to abrogate or impair existing obligations of the United States or any agency thereof to any Pueblo, whether based on treaty, agreement, or act of Congress.

The status of Pueblo lands and water rights in relation to the District and the United States shall not be changed whether the works of said District are operated by the District or by the United States.

OUTDOOR RECREATION - FISH AND WILDLIFE RESOURCES

13. The unit is designed to include recreation facilities. Construction of recreation facilities shall be contingent upon the United States' making appropriate arrangements with the governing body of the Nambe Pueblo for the operation and maintenance of such facilities.

DISPOSITION OF MISCELLANEOUS NET REVENUES

14. During construction of the unit works and through the operation and maintenance stage, all miscellaneous net revenues, defined as revenues other than operating income, received for the use of property or improvements acquired as unit works (including, but not by way of limitation, net revenues from the sale, rent, or lease of unit lands or the net revenue from the sale of sand, gravel, minerals, or other products from said lands) shall be applied as a credit on construction charges. No credit shall apply to cost obligations which are reimbursable by the District.

TITLE TO UNIT WORKS

15. Title to all reservoir storage complex and unit works shall remain in the United States until otherwise provided by Congress, except that pursuant to the authority of the Act of June 24, 1965 (79 Stat. 172, P.L. 89-48), title to movable property which is necessary for the operation and maintenance of the unit works and which has been purchased with funds advanced by the District or which has been purchased with appropriated funds and the expenditures therefor are to be repaid under this contract shall be transferred to the District at the time unit works are transferred to the District for its operation and maintenance.

EXCESS LANDS

16. Pursuant to the provisions of the Federal Reclamation laws, water made available hereunder shall not be delivered to more than one hundred sixty (160) irrigable acres in the beneficial ownership of any one person or other entity or of more than three hundred twenty (320) irrigable acres held in the beneficial ownership of husband and wife as tenants in common, or by the entirety, or as community property, except that delivery may be made to lands held in excess of this limitation if recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary of the Interior and at prices not to exceed those fixed by the Secretary of the Interior are executed as are provided for by the provisions of Section 46 of the Act of May 25, 1926 (44 Stat. 649), as amended by the Act of July 11, 1956 (70 Stat. 524), and the Act of September 2, 1960 (74 Stat. 232).

ACQUISITION OF WATER RIGHTS, LANDS,
AND INTERESTS IN LANDS

17. The United States shall not be obligated to commence construction or perform any other act in pursuance of this contract, or having commenced, to continue such construction or performance, nor shall any water be delivered, until and unless:

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a. Water rights permitting storage in unit works satisfactory to the contracting officer have been acquired or assured.

b. Necessary lands and interests in lands have been secured or satisfactory contracts entered into for the acquisition thereof. This includes conveyance by the Nambe Pueblo Indians of the necessary lands and interests in lands for the dam and reservoir and specified appurtenances thereto to be located upon property of the said Nambe Pueblo Indians.

WATER RIGHTS - WATER SUPPLY GENERAL

18. a. Protection of Unit Water Supply - In case a dispute arises as to the character, extent, priority, or validity of the right of the United States or the District to use or permit use of Nambe River water claimed for the District, the District shall promptly bring and diligently prosecute or defend judicial proceedings for the determination of such dispute and shall take all measures necessary toward the defense and protection of the water supply.

b. Rights to Beneficial Use of Water - Beneficial use shall be the basis, the measure, and the limit of the right to the use of unit water.

c. Water Shortages - On account of drought and other causes, there may occur at times during any year a shortage in the quantity of water available from the reservoir for use by the District pursuant to this contract. In no event shall any liability accrue against the United States or any of its officers or employees for any damage, direct or indirect, arising out of any such shortage.

d. District Facility Rights - Upon complete payment of the obligations assumed, the District, its designee or designees, shall have a permanent right to use the unit reservoir capacity for delivering the allocated yield, as designated by the contracting officer so long as the space is physically available, subject to payment to the United States of a reasonable annual charge to cover operation and maintenance costs and a fair share of administrative costs applicable to the project, including particularly the reservoir storage complex.

e. Other Uses - It is understood that the unit is authorized (1) for storing, regulating, and furnishing water for an

irrigation water supply, (2) for conserving and developing fish and wildlife resources, and (3) for enhancing outdoor recreation opportunities.

f. Water Disposal and Distribution - The District shall be responsible for disposal of the estimated annual yield of water from the unit works. Revenues therefrom shall be used only for payment of operation and maintenance costs and retirement of the obligations assumed by this contract.

PRODUCTION OF BASIC AGRICULTURAL COMMODITY RESTRICTED

19. Pursuant to the provisions of the Act of Congress approved June 13, 1962 (76 Stat. 96), for the period ending ten (10) years after completion of construction of the initial stage of San Juan-Chama project, no water from the project shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in Section 408(c) of the Agricultural Act of 1949 (63 Stat. 1056, 7 U.S.C. 1428), or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in Section 301(b)(10) of the Agricultural Adjustment Act of 1938 (52 Stat. 41), as amended (7 U.S.C. 1281), unless the Secretary of Agriculture calls for an increase in the production of such commodity in the interest of national security.

COMPUTATION OF COSTS

20. The costs of constructing the unit shall embrace expenditures of whatsoever kind in connection with, growing out of, or pursuing from the work or operation described, including but without limitation by means of this enumeration, the cost of labor, material, equipment, engineering and legal work, superintendence, administration and overhead, general expenses, rights-of-way, inspections, special services, property, and damage of all kinds. The determination of what costs are properly chargeable hereunder and the amount thereof shall be made by the contracting officer.

RELEASES AND INDEMNITY

21. District hereby covenants and agrees that the United States, its officer, agents, employees, successors, or assigns, shall not be liable for damages when suspensions or reductions in delivery of

water occur for any reason whatsoever including but not limited to an insufficient supply of water, as determined by the contracting officer, or by hostile diversion, drought, or interruption of service occasioned by necessary repairs to any of the works by means of which water is stored or for damages caused by floods, unlawful acts, or unavoidable accidents. The District also hereby expressly relieves and releases the United States, its officers, agents, and employees, from any liability or responsibility whatsoever for any loss of water delivered hereunder which may occur between the point or points of delivery and the place or places of use by the District.

UNCONTROLLABLE FORCES

22. No party shall be considered to be in default in respect to any obligation hereunder, if prevented from fulfilling such obligation by reason of uncontrollable forces, the term "uncontrollable forces" being deemed, for the purposes of this contract, to mean any cause beyond the control of the party affected, including but not limited to inadequacy of water, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority, which by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Any party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

NOTICES

23. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given when mailed, postage prepaid, or delivered to the Regional Director, Region 5, Bureau of Reclamation, Amarillo, Texas, on behalf of the United States and to the Pojoaque Valley Irrigation District, Pojoaque, New Mexico, on behalf of the District. 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.

PENALTY FOR DELINQUENT PAYMENTS

24. The District shall pay a penalty on installments or charges which become delinquent computed at the rate of one-half of one percent per month of the amount of such delinquent installments or

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charges for each day from such delinquency until paid: Provided, That no penalty shall be charged to the District unless such delinquency continues for more than thirty (30) days.

REFUSAL OF SERVICE IN CASE OF DEFAULT

25. a. Should the District fail to levy the necessary taxes or assessments, tolls, or other charges against any water user in the District required to be levied, or having levied, should the District be prevented from collecting such assessments, tolls, or other charges by any judicial proceedings, or otherwise fail to collect them, no such water user shall be entitled to the use of the unit works while said default continues. At his option, the contracting officer may proceed to assess the construction and operation and maintenance charges for the use of water in the manner provided for in the Federal Reclamation laws and may require payment thereof as a condition precedent to the delivery of water, or may himself make an apportionment of any construction or operation and maintenance indebtedness of the District to the United States among the various users of water in the District and may issue public notices to the full extent authorized under any Reclamation laws.

b. No water shall be delivered by the District through the use of unit works to or for the use of persons or lands therein during any period in which the District may be:

(1) More than 12 months in arrears in the payment to the United States of any construction charges accrued under this contract.

(2) In arrears in the advance payment to the United States of the operation and maintenance charges fixed under Articles 9 and 10 of this contract.

c. No water shall be made available to any water user or be delivered by the District through unit works to any water users in arrears in the payment to the District of any assessments, tolls, or other charges levied or established by the District for the purpose of raising revenues to meet the payment by the District to the United States of any of the District's obligations under this contract.

REVIEW AND INSPECTION OF UNIT WORKS FOR
DETERMINING ADEQUACY OF MAINTENANCE

26. a. The contracting officer along with the District may, from time to time, make routine scheduled surveys of unit works being operated by the District with a view to assisting the District in determining the condition of facilities and the adequacy of the maintenance program. This survey may include any or all of the unit facilities constructed by the United States and transferred to the District or unit facilities constructed by the District with funds advanced by the United States. A report of the survey, including recommendations, if any, will be prepared and copies will be furnished to the District. Except for such participation by the District as it may desire, the survey and report will be without cost to the District.

b. If deemed necessary by the contracting officer or requested by the District, special inspections of any unit works being operated by the District and of the District's books and records may be made to ascertain the extent of any operation and maintenance deficiencies, to determine the remedial measures required for their correction, and to assist the District in solving specific problems. Any special inspection or audit shall, except in a case of emergency, be made after written notice to the District, and the actual cost thereof shall be paid by the District to the United States.

CHANGES IN DISTRICT ORGANIZATION

27. While this contract is in effect, no change shall be made in the District by inclusion or exclusion of lands, by dissolution, consolidation, merger, or otherwise, which would affect the obligation of the District or the United States hereunder, except upon the contracting officer's written consent thereto.

CONFIRMATION OF CONTRACT

28. The execution of this contract shall be authorized or ratified by the qualified electors of the District at an election held for that purpose. The District, after the election and upon the execution of this contract, shall promptly secure a final decree of the proper court of the State of New Mexico approving and confirming the contract and decreeing and adjudging it and the apportionment of the benefits made thereunder to be lawful, valid, and binding on the District. The District shall furnish to the United States certified copies of such decrees and of all pertinent supporting records.

BOOKS, RECORDS, AND REPORTS

29. The District shall establish and maintain accounts and other books and records pertaining to its financial transactions, land use and crop census, water supply, water use, changes to unit works, and to other matters as the contracting officer may require. Reports thereon shall be furnished to the contracting officer in such form and on such date or dates as he may require. Subject to applicable Federal laws and regulations, each party shall have the right during office hours to examine and make copies of each other's books and official records relating to matters covered by this contract.

BENEFITS CONDITIONED UPON PAYMENT - GENERAL OBLIGATION

30. a. The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this contract.

b. The District will cause to be levied and collected all necessary assessments, tolls, and other charges and will use all of its authority and resources to meet the obligations hereunder. The obligation of the District to pay to the United States the charges becoming due as provided herein is a general obligation of the District notwithstanding the manner in which the obligation may be distributed among the District's water users and notwithstanding the default of individual water users in the payment of assessments, tolls, or other charges levied by the District.

WATER POLLUTION CONTROL

31. The District shall, within its legal authority, comply fully with all applicable Federal laws, orders, and regulations and the laws of the State of New Mexico, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, ground water, or water courses with respect to thermal pollution or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts, or other pollutants. Any contract the District may enter into with a third party for the furnishing of project water shall contain a similar water pollution control article.

QUALITY OF WATER

32. The operation and maintenance of unit facilities and the design and construction of new unit facilities for the provision of water under this contract shall be performed in such a manner as is

practicable to maintain the quality of raw water to be furnished hereunder at the highest level reasonably attainable as determined by the contracting officer. The United States is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water except to the extent such facilities are expressly referred to elsewhere in this contract as a part of the unit facilities to be constructed by the United States pursuant to Reclamation law or as otherwise required by law. Further, the United States does not warrant the quality of water to be furnished pursuant to this contract.

EQUAL OPPORTUNITY

33. During the performance of this contract:

a. The District will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The District 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 District 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 Equal Opportunity clause.

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

c. The District will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the contracting officer, advising the labor union or workers' representative of the District's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The District 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 District will furnish all information and reports required by Executive Order No. 11246, 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 District's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders this contract may be canceled, terminated, or suspended, in whole or in part, and the District may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246, 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 District will include the provisions of paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246, so that such provisions will be binding upon each subcontractor or vendor. The District will take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the District becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting officer, the District may request the United States to enter into such litigation to protect the interests of the United States.

TITLE VI, CIVIL RIGHTS ACT OF 1964

34. a. The District agrees that it will comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241) and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the District receives financial assistance from the United States and hereby gives assurance that it will immediately take any measures to effectuate this agreement.

b. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the District by the United States, this assurance obligates the District, or in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates the District for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the District for the period during which the Federal financial assistance is extended to it by the United States.

c. This assurance is given 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 District by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The District recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the District, its successors, transferees, and assignees.

REMEDIES UNDER CONTRACT NOT EXCLUSIVE - WAIVERS

35. Nothing contained in this contract shall be construed as in any manner abridging, limiting, or depriving the United States or the District of any means of enforcing any remedy, either at law or in equity, for the breach of any of the provisions hereof which either party would otherwise have. Any waiver at any time by either party to this contract of its rights with respect to a default, or any matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any subsequent default or matter. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any other provisions hereof.

AMENDMENT OR REPEAL OF FEDERAL RECLAMATION LAWS

36. In the event that the Congress of the United States may repeal or amend any of the provisions of the Federal Reclamation Law, the United States agrees, at the option of the District, to negotiate amendments of appropriate articles of this contract, consistent with the provisions of the laws effecting any such repeal or amendment.

OFFICIALS NOT TO BENEFIT

37. a. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

b. No official of the District shall receive any benefit that may arise by reason of this contract other than as a landowner within the District and in the same manner as other landowners within the District.

CONTINGENT ON APPROPRIATIONS OR ALLOTMENT OF FUNDS

38. The expenditure or advance of any money or the performance of any work by the United States hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation and allotment being made. The failure of Congress to appropriate funds or the absence of any allotment of funds shall not relieve the District from any obligations under this contract. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

RULES, REGULATIONS AND DETERMINATIONS

39. a. The Secretary reserves the right to make, after an opportunity has been offered to the District for consultation, rules and regulations consistent with the provisions of this contract, the laws of the United States and the State of New Mexico, to add to or to modify them as may be deemed proper and necessary to carry out this contract, and to supply necessary details of its administration which are not covered by express provisions of this contract. The District agrees to observe such rules and regulations.

b. Where the terms of this contract provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. The Secretary's decision on all questions of fact arising under this contract shall be made only after consultation with the District, and shall be conclusive upon the parties thereto.

(FST100570)

ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED

40. 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 part or interest therein shall be valid until approved by the contracting officer.

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

UNITED STATES OF AMERICA

By

J. A. Bradley
Regional Director

ATTEST:

POJOAQUE VALLEY IRRIGATION
DISTRICT

By

J. A. Gorman
President

Elmer J. Janssen

Gilbert R. Vintz

Excerpt from the Minutes of the September 30, 1970, regular meeting of the Pojoaque Valley Irrigation District.

MOTION

Motion of Director Elmer T. Townsley, seconded by Director J. A. Gomez that the following resolution be adopted:

RESOLUTION

WHEREAS, at this regular meeting of the Board of Directors of the Pojoaque Valley Irrigation District held in Pojoaque, New Mexico, on this 30th day of September 1970, at which meeting a quorum is present, there has been presented a proposed contract between the United States and the Pojoaque Valley Irrigation District, relating to construction, operation and maintenance, and repayment of reimbursable obligations of the Pojoaque Tributary Irrigation Unit of the San Juan-Chama Project, and

WHEREAS, the said draft of contract and each and every provision thereof has been read to the Board and thoroughly discussed, and

WHEREAS, it is the opinion of the Board that said contract and its provisions are satisfactory;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Pojoaque Valley Irrigation District hereby

1. Approves the contract between the United States of America and this District. Said contract shall be made a part of these minutes.
2. Authorizes and directs the President and Secretary of this District to execute and attest said contract as the act of the District and forward executed copies thereof to the Regional Director of the Bureau of Reclamation, Amarillo, Texas, together with copies of this resolution.
3. Requests approval and execution of this contract in behalf of the United States.

Adopted at Pojoaque, New Mexico, this 30th day of September 1970.

* * * * *

CERTIFICATION

STATE OF NEW MEXICO

POJOAQUE VALLEY IRRIGATION DISTRICT

I, ELMERT TOWNSLEY, Secretary of the Board of Directors of Pojoaque Valley Irrigation District and custodian of its records, do hereby certify that the above and foregoing is true and correct and a complete copy of that part of its records pertaining to a resolution of the Board adopted at its regular meeting on September 30, 1970, at which said meeting a quorum was present.

Elmer J. Townsley
Secretary, Pojoaque Valley
Irrigation District