

ORIGINAL

SCANNED

Contract No. 9-07-70-W0020

Supplement No. 10

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Colorado-Big Thompson Project
Colorado

**SUPPLEMENT OF CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND
THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT
FOR ADDRESSING COMMITMENTS ASSOCIATED WITH
MEETING THE GRAND LAKE CLARITY STANDARD**

THIS SUPPLEMENT, entered into this 23rd day of OCT 2013, pursuant generally to the Act of June 17, 1902 (32 Stat. 388), and subsequent acts supplementary thereto and amendatory thereof collectively known as the Federal Reclamation laws, particularly, but not limited to, the Act of August 9, 1937 (50 Stat. 595) between the UNITED STATES OF AMERICA, hereinafter called the "United States," acting through the Secretary of the Interior, represented by the "Contracting Officer" executing this Supplement, and NORTHERN COLORADO WATER CONSERVANCY DISTRICT, hereinafter referred to as "Northern Water," a quasi-municipal entity and political subdivision of the State of Colorado, organized and existing under and by virtue of the laws of the State of Colorado, with its principal place of business in Berthoud, Colorado. The United States and Northern Water hereinafter are each sometimes individually called "Party," and sometimes collectively called the "Parties".

WITNESSETH THAT:

The following statements are made in explanation:

EXPLANATORY RECITALS

- a. WHEREAS, the United States constructed the Colorado-Big Thompson (C-BT) Project in the State of Colorado, pursuant to Federal Reclamation laws; and
- b. WHEREAS, the Parties executed Contract No. 9-07-70-W0020, on July 5, 1938; it has subsequently been amended and supplemented. The original contract along with its amendments and supplements are collectively referred to herein as the "1938 Repayment Contract"; and
- c. WHEREAS, the Parties have concerns with the clarity of Grand Lake; and
- d. WHEREAS, in 2008, the Colorado Water Quality Control Commission adopted a narrative clarity standard and a numerical clarity standard for Grand Lake; and
- e. WHEREAS, the Parties wish to meet the applicable water clarity standard.

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

PURPOSE

1. The purpose of this Supplement is to describe the Parties' commitment to identify and evaluate factors that affect clarity in Grand Lake and to develop a plan in accordance with this Supplement to meet the applicable water clarity standards.

RESPONSIBILITIES

2. a. There may be a relationship between the reduced clarity in Grand Lake and the operation of the C-BT Project as well as other factors. The Parties agree that further study and evaluation would be beneficial to better understand this potential relationship.

b. The Parties will: 1) actively participate in the process of identification, development, and evaluation of factors, causes, and actions that affect clarity in Grand Lake; 2) collaborate with each other and other appropriate parties and groups ("Stakeholders") to identify, develop, and evaluate specific proposed actions to meet applicable water clarity standards in a manner that recognizes the relative contributing factors that affect Grand Lake water clarity, in order to allow for, as appropriate, recommendations by the Parties for specific actions to meet applicable water clarity standards at Grand Lake, including participation in further studies designed to identify specific factors affecting clarity; 3) implement the process and actions defined in Article 4 below as appropriate and within legal limitations and funding constraints, with the goal of preserving and maximizing overall C-BT Project benefits while meeting applicable clarity standards at Grand Lake.

c. The United States will have the final authority to approve both the Stakeholders and the process identified in Article 2.b. above, after consultation with Northern Water, other Federal, state, and local authorities, and other entities as the United States deems appropriate.

PAYMENT RESPONSIBILITY

3. The responsibility for payment of the cost of implementing measures to meet applicable water clarity standards shall be determined in accordance with Reclamation law. The Parties acknowledge that congressional and other authorization may be necessary to implement potential solutions.

IMPLEMENTATION

4. a. Pursuant to the foregoing, if specific actions are identified pursuant to Article 2.b. above, the Parties commit to work cooperatively and collaboratively, with each other and with other Stakeholders; to evaluate any such specific actions under applicable local, state, and/or federally required processes, regulations, policies, and statutes; to cooperate with other Stakeholders to identify sources of funding; and to implement any such specific actions to meet the goal identified in Article 2.b. above within legal limitations and funding constraints and in a manner that recognizes the causes and relative contributing factors that affect Grand Lake water clarity. This Supplement does not affect or modify existing authorities, including those regarding the allocation of costs, for operation and maintenance of or capital improvements related to the C-BT Project.

b. The United States may take actions to meet the applicable clarity standard, and the cost of such actions will be allocated in accordance with Reclamation law. The Parties acknowledge that the exact nature and cost of such actions is unknown until the processes outlined in Article 2 are complete. Until a proposed solution is identified, agreed upon, and appropriate authorizations, if necessary, are obtained, the Parties reserve all rights, arguments, and defenses relative to the proposed solution itself and the allocation of costs therein. In the event the Parties are unable to reach agreement concerning the specific actions that should be taken to meet the goal identified in Article 2.b. above and the United States makes a determination to implement specific action(s), the Parties reserve all rights, arguments, and defenses regarding such determination to implement specific actions, and this Supplement does not modify, waive, limit, or relinquish any right of Northern Water to contest the United States' determination to take specific actions in any judicial, administrative, or legislative forum. The execution of this Supplement shall not be used by either Party in any judicial, administrative, or legislative proceeding as an admission to the contrary.

EFFECT ON THE 1938 REPAYMENT CONTRACT

5. This Supplement is in addition to the 1938 Repayment Contract and, except as expressly provided in Articles 2.b. and 4. above, does not modify or amend the 1938 Repayment Contract. This Supplement shall not be a basis for any direct or indirect interpretation or construction of any provision of the 1938 Repayment Contract for any purpose. Prior drafts of this Supplement are not relevant to the interpretation of this Supplement.

STANDARD CONTRACT ARTICLES

6. The standard contract articles applicable to this Supplement are listed below. The full text of these standard articles is attached as Exhibit A and is hereby made a part of this Supplement.

- A. Notices
- B. Officials Not to Benefit
- C. Changes in Contractor's Organization
- D. Assignments Limited - Successors and Assigns Obligated
- E. Books, Records, and Reports
- F. Rules, Regulations, and Determinations
- G. Equal Employment Opportunity (Federally Assisted Construction)
- H. Compliance with Civil Rights Laws and Regulations

IN WITNESS WHEREOF, The Parties have executed this Supplement the day and year written above and agree to the terms, provisions, special conditions, and standard provisions expressed or referenced herein.

UNITED STATES OF AMERICA

By 

Michael J. Ryan
Regional Director
Great Plains Region
Bureau of Reclamation

**NORTHERN COLORADO WATER
CONSERVANCY DISTRICT**

By 

Eric W. Wilkinson
General Manager

**EXHIBIT A
STANDARD CONTRACT ARTICLES**

NOTICES

A. Any notice, demand, or request authorized or required by this Supplement shall be deemed to have been given, on behalf of Northern Water, when mailed, postage prepaid, or delivered to the:

Regional Director
Great Plains Region
Bureau of Reclamation
P.O. Box 36900
Billings, MT 59107

and on behalf of the United States, when mailed, postage prepaid, or delivered to the:

General Manager
Northern Colorado Water
Conservancy District
220 Water Avenue
Berthoud, Colorado 80513

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.

OFFICIALS NOT TO BENEFIT

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

CHANGES IN CONTRACTOR'S ORGANIZATION

C. While this Supplement is in effect, no change may be made in Northern Water's organization, by inclusion or exclusion of lands or by any other changes which may affect the respective rights, obligations, privileges, and duties of either the United States or Northern Water under this Supplement including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

D. The provisions of this Supplement shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this Supplement or any right or interest therein by either Party shall be valid until approved in writing by the other Party.

BOOKS, RECORDS, AND REPORTS

E. Northern Water shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Supplement, including Northern Water's financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each Party to this Supplement shall have the right during office hours to examine and make copies of the other Party's books and records relating to matters covered by this Supplement.

RULES, REGULATIONS, AND DETERMINATIONS

F. 1. The Parties agree that the delivery of water or the use of Federal facilities pursuant to this Supplement is subject to Federal reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

2. The Contracting Officer shall have the right to make determinations necessary to administer this Supplement that are consistent with its provisions, the laws of the United States and the State of Colorado, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with Northern Water.

EQUAL EMPLOYMENT OPPORTUNITY

G. During the performance of this Supplement, Northern Water agrees as follows:

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

2. Northern Water will, in all solicitations or advertisements for employees placed by or on behalf of Northern Water, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.

3. Northern Water 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 Northern Water's commitments under section 202 of Executive Order 11246 of September 24, 1965 (EO 11246), and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. Northern Water will comply with all provisions of EO 11246, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. Northern Water will furnish all information and reports required by EO 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of Northern Water's noncompliance with the nondiscrimination clauses of this Supplement or with any of such rules, regulations, or orders, this Supplement may be canceled, terminated or suspended in whole or in part and Northern Water may be declared ineligible for further Government contracts in accordance with procedures authorized in EO 11246, and such other sanctions may be imposed and remedies invoked as provided in EO 11246 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. Northern Water 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 EO 11246, so that such provisions will be binding upon each subcontractor or vendor. Northern Water 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 Northern Water becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Northern Water may request that the United States enter into such litigation to protect the interests of the United States.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

H. 1. Northern Water shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title III of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

2. These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this Supplement, Northern Water 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. Northern Water 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 Northern Water 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. Northern Water recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this Article and that the United States reserves the right to seek judicial enforcement thereof.

4. Complaints of discrimination against Northern Water shall be investigated by the Contracting Officer's Office of Civil Rights