

CONTRACT BETWEEN THE CENTRAL UTAH WATER CONSERVANCY DISTRICT
FOR SUPPLEMENTAL IRRIGATION WATER
DUCHESNE IRRIGATION BLOCK
BONNEVILLE UNIT
CENTRAL UTAH PROJECT

THIS CONTRACT, made this 12th day of March 1979,

between the Central Utah Water Conservancy District, organized and doing business under the laws of the State of Utah, with its principal place of business at Orem, Utah, hereinafter styled the District, and the Utah Basin Irrig. Co., a corporation, organized and doing business under the laws of the State of Utah with its principal place of business at Myton, Utah, hereinafter styled the Contractor.

WITNESSETH, THAT:

WHEREAS, the District entered into a Contract No. 14-06-400-4286 with the United States of America dated December 28, 1965, hereinafter referred to as the Governmental-District contract, for repayment of certain costs of construction of the works of the Bonneville Unit, Central Utah Project, which unit is hereinafter referred to as the Project, by means of which water, hereinafter referred to as Project Irrigation Water, will be made available from the Strawberry and Duchesne River and other sources.

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

1. Definitions: Where used in the contract the following definitions shall apply.

a. "Secretary" or his "Authorized Representative" or either of them means the Secretary of the United States Department of the Interior.

b. "Contractor" means Clinton Basin Irrigation Company.

c. "Project Water" means all water made available through or by means of project works divided into two classes:

d. "Class 1" water means project water allotted to non-Indian irrigators in perpetuity.

e. "Class 2" water means project water allotted to Contractor on a year to year basis until project storage water is needed to replace direct flow water which no longer can be diverted due to development of all or part of 2,595 acres of group 3 and 4 Indian land.

2. Water Purchased: The District will sell to the Contractor and the Contractor agrees to purchase the perpetual right to use 10.31 acre-feet annually of Class 1 Project Irrigation Water for beneficial use in the irrigation of 7,253 acres of irrigable land.

3. Water Leased: The District will lease to the Contractor and the Contractor agrees to lease 3,264 acre-feet of Class 2 Project Irrigation Water on a year to year basis until Class 2 Project Irrigation Water is needed to replace direct flow water which no longer can be diverted due to development of all or part of 2,595 acres of group 3 and 4 Indian land described in Exhibit A attached hereto and made part hereof.

4. Terms of Payments: Contractor agrees, beginning the year that water is allotted, to purchase and pay on or before December 31 each year thereafter, for the right to use Class 1 water, whether or not actually used or needed, a sum to be fixed annually by the Board of Directors of the District, which shall include (a) an amount not to exceed \$2.50 annually per acre-foot for all Class 1 water allotted, which sum shall be applied on the District's irrigation repayment obligation under the repayment contract between the United States and the District dated December 28, 1965, as amended, and (b) a fair proportionate amount of the operation, maintenance, replacement reserve fund, emergency reserve fund, and other charges and expenses apportioned to the Duchesne Irrigation Block. Contractor agrees to pay for Class 2 water on or before April 1 each year before such water is used, at the same rate as described in (a) and (b) above for Class 1 project water. As Class 2 water is replaced by project water to satisfy the ninth point as explained in Exhibit A attached hereto and by this reference made part hereof, Contractor agrees to pay only part (b) for said quantity of water. If the Contractor gives the District notice by July 1st that Contractor does not intend to use the Class 2 water, the Contractor will be reimbursed for the quantity of water so released by the notice, or receive a credit toward next year's Class 2 water obligation, at Contractor's option, at the same rate provided above.

5. Conveyance Losses: Contractor agrees to bear a pro-rata share of all conveyance and operation losses apportioned by the District to the Clinton Basin ^{Irigoien} Canal Company after consultation with the water users at

a duly noticed meeting. Project Irrigation Water so allotted less such losses shall be delivered and measured at Contractor's canal headgate or other point or points designated by the District after consultation with the Contractor. Contractor agrees at his expense to provide proper measuring devices at such point or points to which water is delivered by the District. Contractor agrees at his expense to make any necessary arrangements for the carriage of allotted project water from the delivery point or points to places of use. The District shall not be liable for damages sustained by Contractor, and persons acting by, through, or under him, by reason of inability of the District to convey water to Contractor's point or points of delivery whether occasioned by weather conditions, failure or damage to facilities or otherwise. Contractor agrees that waste, seepage, and return flow from water delivered pursuant to this Contract shall belong to the United States for use and benefit of the Project. The District may substitute in lieu of stored water other project water.

6. Contractors Water Use: The Contractor agrees that it is irrigating 10,304 acres of land and its present water rights including applications to appropriate water, herein referred to as Company water rights, and the water therefrom as Contractors water, are as follows:

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Application No. 3848 a

the use of return flow of project water as established pursuant to standards and procedures governing the operation of project works, provided for in Article 11 (c) of the Government-District Contract. Any undelivered water remaining in storage on October 31 of each year shall become project water and Contractor shall not be entitled to carryover storage beyond such date. In the event there is a shortage of project water in the Duchesne area caused by drought, inaccuracy in distribution not resulting from negligence, hostile diversion, prior or superior claims, or other causes not within the control of the District, no liability shall accrue against the District, or the United States, or any of their officers, agents or employees or either of them, for any damage, direct or indirect, arising therefrom and the payments to the District provided herein shall not be reduced because of any such shortage or damage. Deliveries of water allotted herein shall be reduced in the proportion that the number of acre-feet of such shortages in the Duchesne area as determined by the District bears to the total number of acre-feet allocated for irrigation use in said area. To the extent that it is physically possible, irrigation shortages will be equated throughout the Bonneville Unit in accordance with the operating criteria to be promulgated as provided in the Government District Contract.

8. Payment of Operation and Maintenance Expenses: An annual operation and maintenance charge notice, containing a statement of the estimated cost of operation and maintenance, as outlined in Article 4 for the (b) part of the payment including the other charges required to be paid under the Government-District contract to be paid by the Contractor

and further agrees that under Project operation it will limit the use of water under its water rights tabulated above in accordance with the following criteria:

- (a) The irrigation season is defined as that period from April 1 through October 31 of each year, or such other period as may be established by the District after consultation with the Contractor.
- (b) The project plan for water supply is based on a water duty of 4 acre-feet per acre for each irrigation season. The annual irrigation demand for land irrigated by the Contractor as it applies to nonproject and project water is limited to a total duty each season as finally fixed by the courts, but if the duty is finally fixed by law in an amount other than 4 acre-feet per acre for the irrigation season this contract shall be subject to re-negotiation and adjustment if requested by the United States of America or the Contractor.
- (c) The Contractor shall not use more than $\frac{47}{100}$ of its annual irrigation demand by June 30 of each year. In particular years of need this percentage of demand hereinabove set forth may be modified by mutual written agreement of the Contractor and the District.

7. Quantity of Water Delivered: An allotment of one acre-foot of water under this Contract for both Class 1 and Class 2 water means that Contractor is entitled to the beneficial use of 1/21,400th of the annual yield of 1/3 of the active capacity of Starvation Reservoir including

shall be furnished to the Contractor annually on or before July 1 of the year preceding the year to which the notice is applicable. The Contractor shall pay the amount set out in any such operation and maintenance charge notice on or before December 1 of the year in which such notice is given. Whenever, in the opinion of the District, the funds so advanced will be inadequate to operate and maintain the works being operated by the District or the United States, a supplemental operation and maintenance charge notice may be given at any time stating therein the amount of the Contractor's share of the additional funds required, and the Contractor shall advance such additional amounts on or before the date specified in the supplemental notice. The Contractor agrees to pay its share of the annual payments to the reserve funds which the District is obligated to establish under the provisions of Articles 15 and 16 of the Government-District contract. If the funds advanced by the Contractor exceed the Contractor's pro-rata share of the actual cost of operation and maintenance for such irrigation works for the year for which advanced, the surplus shall be credited on the operation and maintenance charge payment due for the succeeding year or in case there is no such payment due to the District for the succeeding year, it shall be applied on the next annual installment to be paid by the Contractor to the District for the purchase of irrigation water.

9. Contractor to use all Powers to Collect Charges: The Contractor will levy and collect all necessary assessments and calls against its outstanding stock representing project water, including amounts sufficient to make up for the defaults of its stockholders who do not pay

such assessments and calls, in order to pay to the District all charges specified in this contract. The Contractor agrees to use all of its powers and resources, including but not limited to the power to sell such stock of delinquent stockholders and to withhold delivery of project water in order to collect the necessary funds to pay such charges.

10. Security for Payment: The Contractor hereby grants to the District a first lien upon the proceeds of annual and special assessments against the stock of the Contractor representing project water to the extent necessary to meet the annual payments due the District under this contract.

11. Refusal of Water in Case of Default: No project water shall be delivered through the project works to or for the Contractor if it is in arrears in the advance payment of development charges or of operation, maintenance, and other charges due the District, or if it is in arrears more than 12 months in the payment of the annual payments provided in Article 4, or more than 12 months in arrears in the payment of any amounts due the District. The provisions of this article are not exclusive and shall not in any manner prevent the District from exercising any other remedy given by this contract or by law to enforce the collection of any payments due under the terms of this contract.

12. Penalty for Delinquency: Every installment or charge required to be paid to the District under this contract and which shall remain unpaid after it shall have become due and payable shall be subject to a penalty of 1% per month from the date of delinquency provided that no penalty shall be charged to or paid by the Contractor unless such delinquency continues for more than 30 days.

13. Operation and Maintenance of Contractors Facilities: The Contractor shall operate and maintain, without cost to the District, or the United States, all of its canals and other facilities necessary to take and utilize its water, including the water purchased under this contract.

14. Beneficial Use of Water: The basis, the measure, and the limit of the right of the Contractor to the use of project water shall rest perpetually in the beneficial application thereof, and the Contractor agrees to put such water to beneficial irrigation use in accordance with law.

15. Lands for which Water is Furnished: Limitations on Area - Except as permitted by the Act of July 11, 1956, (70 Stat. 524) or the Act of September 2, 1960, (74 Stat. 732) no water shall be delivered to any excess lands as defined in Article 27 or as provided in Article 28 of the Government-District contract.

16. Water Shortages, Waste, Seepage, and Return Flows:

- (a) On account of drought or other causes, there may occur at times during any year a shortage in the quantity of project irrigation water available for delivery to the Contractor pursuant to this contract. In no event shall any liability accrue against the United States or the District or any of their officers or employees for any damage, direct or indirect, arising out of any such shortage. Deliveries to irrigation water users shall be reduced in the proportion that the number of acre-feet of such shortage as determined by the District bears to the total number of acre-feet allocated for irrigation use.

(b) The United States claims all of the waste, seepage, and return flow water derived from water delivered pursuant to this contract and the same is hereby reserved and retained by the United States for beneficial use on the project.

17. Delivery of Project Water: Project water furnished under this contract, shall be delivered and measured at a point or points designated by the District after consultation with the Contractor in accordance with Article 3 of the Government-District contract. It shall not be the responsibility of the District or the United States to provide works to convey such water from said point or points to the place of use. All project water users in the Duchesne Irrigation Block shall be charged a pro-rata share of all conveyance and operation losses apportioned to said Block. Project water so allotted less such losses shall be delivered and measured to the Contractor at the Contractor's canal headgate or other point or points designated by the District after consultation with the Contractor and in accordance with standards and procedures governing operation of project works furnished the District by the United States pursuant to Article 11(c) of the Government-District contract.

18. Sale of Project Water Limited: The Contractor agrees not to sell the use of project water purchased under this contract for any use except irrigation nor to any person other than an irrigation water user in its canal system within the boundaries of the project, either on a permanent or temporary basis, without the advance written consent of the District and the United States. The Contractor further agrees that said project water shall be sold for use only on lands classified as irrigable by the United States Bureau of Reclamation.

19. Subscription Agreement: The Contractor shall enter into Subscription Agreements for the allotment of project water with water users owning irrigable land under its system. Within a reasonable time, not to exceed one year from the execution date of the Subscription agreement, the Contractor shall issue Certificates of Stock representing the project water so allotted. Said Subscription Agreements and Stock Certificates shall be on forms approved by the District.

20. Books, Records, and Reports: The Contractor shall take such measures as the District deems proper: (a) to keep a record of crops raised and agricultural or livestock products produced in the area served by the Contractor, (b) to account for money received and expended for project water, and (c) to keep and furnish suitable records of water supply and the disposition thereof.

21. Assignment Limited - Successors and Assigns Obligated: 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 in writing by the District and the Secretary of the Interior or his duly authorized representative.

22. Approval of the United States Necessary: This contract shall not be effective until approved by the Secretary of the Interior. This contract may be amended and modified by the parties hereto and such amendments and modifications shall be effective upon approval of the Secretary of the Interior or his duly authorized representative.

23. Water Conservancy Act of Utah: This contract shall be subject to the Water Conservancy Act of Utah, Title 73, Chapter 9, Utah Code Annotated 1953, as amended from time to time and rules and regulations of the Board of Directors of the District as adopted from time to time, and the repayment contracts heretofore or hereafter executed between the United States and the District.

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

CENTRAL UTAH WATER CONSERVANCY DISTRICT

Attest: [Signature] Secretary By [Signature] President

Uintah Basin Irrigation Company

Attest: [Signature] Secretary By Maurice C. Harvey President 10-25-79

APPROVED: [Signature]
Authorized representative of the Secretary of the Interior

*Appd. Sol. Off.
[Signature]

EXHIBIT A

There are 36,450 acres of Indian land served or to be served from the Duchesne River. From this total, 15,242 acres have been deferred as to development under Contract No. 14-06-W-194, dated September 20, 1965, and 21,208 acres are to receive direct flow water under first rights on the river. Included in the 21,208 acres of primary right lands, 18,613 acres are certificated under Utah State Water Right Procedures and about 2,595 acres are lands without a certificated water right and for the most part are new lands not presently irrigated by the Indians. These lands are scattered throughout the Duchesne River system and could be served by existing distribution facilities or their extensions. During the early part of the irrigation season when stream flows are in excess of water requirements, irrigation of the 2,595 acres of new Indian land would not adversely affect existing non-Indian diversions under a reasonable demand pattern. Return flows will also help satisfy water requirements. If the 2,595 acres of new Indian lands remain undeveloped, there would be no adverse affect on irrigation of non-Indian lands.

Bonneville Unit storage water would be made available to make up deficiencies to non-Indian lands caused by any expansion of irrigation of Indian lands. About 7,500 acre-feet of storage water would be required to replace the affect of Indian development of the 2,595 acres of land.

When the "Drafting Committee" for the organization of the Central Utah Water Conservancy District was considering County proposals, Duchesne County submitted a "Nine-Point Proposal," which was the basis for Duchesne County being part of the District. The relationship of the amount of water for permanent allotment from Starvation Reservoir to the "Nine-Point Proposal," as it relates to the development of the 2,595 acres of Indian land described above, concerns the ninth point which states:

"9. That non-Indian water users, with existing water rights on the Duchesne River not be required to purchase project water for new Indian land development."

The Central Utah Water Conservancy District Board of Directors, by resolution dated March 13, 1970, agreed to honor the provisions of the ninth point and would thus subsidize the capital costs associated with such replacement water. The non-Indian water users would be charged only the operation, maintenance, and replacement costs associated with the delivery of such water.

The estimated yield of Starvation Reservoir associated with the Duchesne River demands (excluding storage for replacement) is about 24,400 acre-feet. This yield has been reduced by 3,000 acre-feet until the affect of direct diversion water use on 1,700 acres of presently non-irrigated, non-Indian land has been assessed. This land, by motion of the Board of Directors of the District, would be recognized with a priority ahead of the project. With the reduction of 3,000 acre-feet, Block Notice No. 1 making project water available to the District was issued by the United States for 21,400 acre-feet on June 19, 1970. Annual payments from the District of \$18,620 began February 15, 1976, for the use of water under Block Notice No. 1. Of the water made available under Block Notice No. 1 (21,400 acre-feet), 9,800 acre-feet will be to supplement present supplies to irrigated non-Indian lands along the Duchesne River. The remaining 11,600 acre-feet of yield is to assure fulfillment of the Midview Exchange in accordance with the project plan. This project storage water, along with existing direct flow rights, will afford lands in the Duchesne area an annual duty of 4.0 acre-feet per acre.

Included in the 9,800 acre-feet of supplemental service project water for the Duchesne River is 7,500 acre-feet to be held in reserve for replacement as provided under the ninth point of the Duchesne County proposals and 2,300 acre-feet to sell under permanent allotment.