



Colorado River District

Protecting Western Colorado Water Since 1937

MEMORANDUM

July 7, 2011

TO: BOARD OF DIRECTORS
ERIC KUHN, GENERAL MANAGER

FROM: DAN BIRCH, DEPUTY GENERAL MANAGER

SUBJECT: ORCHARD MESA IRRIGATION DISTRICT (OMID) EFFICIENCY IMPROVEMENTS

We have come to terms with the United States on the Land Purchase Contract, the final version of which is attached. Our special counsel, Lee Leavenworth, has reviewed the agreement and recommends its approval.

We request the Board take action to allow execution of the Land Purchase Contract.

There have been some recent changes to the structure of the other agreements needed to implement the project that we wanted to report to the Board. *These are informational items and no Board action is requested at this time.*

LAND PURCHASE AGREEMENT

The purchase price is \$902,000. This reflects an amount 10 percent over the appraised value, which is the amount the Regional Director of the Bureau of Reclamation can authorize. As we reported in April, this is still substantially less than that the \$1.25M the River District paid for the property in 2009 near the top of the market.

RECENT DEVELOPMENTS

The form of the agreements has recently changed but the substance remains largely unchanged. Rather than a series of agreements with multiple parties, there will be a series of interrelated, bilateral agreements. These are:

- Land Purchase Agreement between the United States and the River District. We expect this transaction will close within the next 6 months.
- Grant Agreement between the Colorado Water Conservation Board and the Orchard Mesa Irrigation District. The CWCB is contributing \$2M to the operation and maintenance fund, the earnings from which will offset a portion of OMID's estimated \$340,000 annual O&M costs.

- Grant Agreement between the River District and OMID. Once a contract has been awarded for the improvements, the River District will convey the proceeds of the sale of the property to the United States to OMID's O&M fund. Even though this amount is less than expected, we anticipate the O&M fund will be adequate.
- Funding/O&M Agreement between the Bureau of Reclamation and OMID. This agreement will cover OMID's obligation to operate the efficiency improvements and the United States' obligation to contribute annual O&M funds through the Recovery Program.

We are currently working on a review draft of the agreements and expect to have these agreements executed by year end.

Attachment

Contract No. ___Number?_____

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

ORCHARD MESA CANAL AUTOMATION PROJECT
GRAND VALLEY PROJECT

LAND PURCHASE CONTRACT

THIS CONTRACT, made this _____ day of _____, 2011, pursuant to the Reclamation Act of June 17, 1902 (32 STAT.388), and acts amendatory thereof or supplementary thereto, particularly Section 2 of the Fish and Wildlife Coordination Act (16 U.S.C. 661-667); Sections 2(c)(2), 4(f), 6, and 7 of the Endangered Species Act (16 U.S.C. 1531 et seq.); and the Act to Authorize the Bureau of Reclamation to Provide Cost Sharing for the Endangered Fish Recovery Implementation Programs for the Upper Colorado and San Juan River Basins [Act of October 30, 2000 (114 Stat. 1602, Public Law 106-392) as amended in Public Law 107-375 dated December 19, 2003)] (Public Law 106-392), between THE UNITED STATES OF AMERICA, hereinafter styled the United States, acting through such officer as is authorized therefore by the Secretary of the Interior, and

COLORADO RIVER WATER CONSERVATION DISTRICT

hereinafter styled Vendor,

WITNESSETH, that for and in consideration of the mutual agreements herein contained, the parties hereto do covenant and agree as follows:

1. The Vendor shall sell and by good and sufficient deed, with covenants of warranty, convey fee simple title to the United States, free of lien or encumbrance, except as otherwise provided herein, the following described real estate:

Parcels 2 and 3 of Turley Amended Parcel Line Adjustment; as recorded in Plat Book 19 at Page 187 as Reception No. 2092027 in the Office of the Clerk and Recorder of Mesa County.

Also known by street address as: 2962 A ½ Road and vacant land, Grand Junction, CO 81503. And Mesa County Assessor or parcel number: 2943-321-00-169, 2943-321-00-170, and 2943-321-00-171.

The described real estate contains 14.63 acres, more or less.

Together with all appurtenances thereto belonging or in anywise appertaining, including minerals, sand and gravel, improvements, and all water and water rights, if any.

2. It is understood and agreed that the rights to be conveyed to the United States, as described in Article 3 hereof, shall be free from lien or encumbrance except: (i) coal, oil, gas, and other mineral and mining rights reserved to or outstanding in third parties as of the date of this contract; (ii) rights-of-way of record or in existence for roads, railroads, telephone lines, transmission lines, ditches, conduits, or pipelines on, over, or across said lands and other rights-of-way and easements of record or in existence on the date of this deed; (iii) any and all matters shown or disclosed by the Improvement Survey Plat dated November 19, 2007 prepared by Patrick R. Green of LANDesign; and (iv) current taxes and assessments not yet due and payable (which shall be prorated as provided herein).

3. The United States shall purchase said property on the terms herein expressed, and on execution and delivery of the deed required by Article 1, and approval by the proper officials of the United States, it shall cause to be paid to the Vendor as full purchase price the sum of NINE HUNDRED AND TWO THOUSAND DOLLARS (\$902,000.00) which will be sent directly to a financial institution by Direct Deposit/Electronic Funds Transfer.

4. The Vendor shall, at his own cost, procure and have recorded all assurances of title and affidavits which the Vendor may be advised by the United States are necessary and proper to show in the Vendor complete fee simple unencumbered title to said property, subject only to the interests, liens, or encumbrances expressly provided herein. Abstracts or certificates of title or title insurance will be procured by the United States at its expense unless otherwise provided in this contract. The expense of recording this contract and the deed required by Article 3 shall be borne by the United States.

The United States shall reimburse the Vendor in an amount deemed by the United States to be fair and reasonable for the following expenses incurred by the Vendor:

(a) Recording fees, transfer taxes and similar expenses incidental to conveying the real property described herein to the United States.

(b) Penalty cost for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering said real property; and

(c) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is earlier.

The Vendor agrees to furnish the United States evidence that these items of expenses have been billed to and paid by him, and further agrees that the United States alone shall determine the fairness and reasonableness of the expenses to be paid.

In the event that the purchase price has not been paid within 6 months of the date of the final execution of this Land Purchase Contract, the United States shall deed the previously

described real estate, in its entirety, back to the Vendor without cost and within five working days. Afterwards, this Contract shall be void and of no further force and effect.

5. In the event that liens or encumbrances other than those expressly provided herein, do exist, the United States may, at its option, remove any and all such outstanding liens and encumbrances by reserving from the purchase price herein set forth the necessary amount and discharge same with the money so reserved, but this provision shall not be construed to authorize the incurrence of any lien or encumbrance as against this contract, nor as an assumption of any lien or encumbrance by the United States.

6. It is agreed that the deed associated with this transaction shall not be recorded until the United States has drawn its check in payment for the above-described real estate to the order of the title contractor or closing agent, who then shall notify the Vendor of said receipt of payment before recording the associated deed. After the deed is recorded, the title contractor or closing agent will issue a final title polity for United States approval and subsequent authorization for the release of funds to the Vendor. In addition, the Vendor hereby authorizes the said contractor or agent to cash the check and make disbursements out of the proceeds to satisfy and pay any taxes, assessments, and encumbrances which are a lien against the real estate; to purchase any Federal or State documentary revenue stamps; to pay any State and local recording or transfer taxes where required, and any other expenses incident to the closing of title which are properly chargeable to the Vendor; and to remit the balance of the proceeds to Vendor; together with an itemized statement of the payments made on Vendors behalf.

7. This contract shall become effective to bind the United States to purchase said property immediately on its execution by the contracting officer acting under the authority of the Secretary of the Interior and shall inure to the benefit of and be binding on the heirs, executors, administrators and assigns of the Vendor, and the assigns of the United States.

8. After execution of this contract by the United States, and prior to the payment of the purchase price of Vendor by the United States and recordation of the Deed, the proper officers and agents of the United States shall, at all times, have unrestricted access to said property for purposes of conducting due diligence regarding this purchase, free of any claim for damage or compensation on the part of the Vendor. The due diligence to be conducted shall not include any ground disturbing activities without prior written approval from the Vendor.. If the Secretary of the Interior determines that the title should be acquired by the United States by judicial procedure, either to procure a safe title or to obtain title more quickly or for any other reason, then the award to be made for the interest acquired in said lands in said proceedings shall be the same amount as the purchase price herein provided.

10. The Vendor warrants that the Vendor has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the United States the right to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial

or selling agencies maintained by the Vendor for the purpose of securing business with others than the United States.

11. 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 there from, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

12. The terms of this contract will survive the conveyances provided for herein.

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

Approved:

UNITED STATES OF AMERICA

Office of the Regional Solicitor

Regional Director
Upper Colorado Region

COLORADO RIVER WATER CONSERVATION
DISTRICT

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT OF COLORADO RIVER WATER CONSERVATION DISTRICT

State of }
 } ss.
County of }

The foregoing instrument was acknowledged before me this ___ day of _____
2011, by _____ as _____ of Colorado River Water
Conservation District.

(NOTARY SEAL)

Notary Public in and for the
State of: _____
Residing at _____
My commission expires: _____