



United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Region
1150 North Curtis Road, Suite 100
Boise, Idaho 83706-1234

FEB 12 2008

IN REPLY
REFER TO:
PN-3323
WTR-4.00

*Supplemental water
or mitigation for
63-12537*

Mr. Barry L. Marcus
Attorney
Marcus, Merrick, Christian & Hardee LLP
737 North 7th Street
Boise, ID 83702-5595

Subject: Repayment Contract and Partial Assignment with Osprey Property Owners Association, Inc. for Lucky Peak Reservoir Storage, Boise and Lucky Peak Projects, Idaho

Dear Mr. Marcus:

Enclosed for the records of Osprey Property Owners Association, Inc., (Osprey) is an original of Contract No. 08XX101626 that has been executed on behalf of the United States, and an original of a partial assignment that has been approved by the United States.

As set forth in Article 8 of the repayment contract, the contract makes available to Osprey stored water accruing to 0.10784 percent of the active capacity of Lucky Peak Reservoir (Lucky Peak). This percent would, so long as the Lucky Peak has an active capacity of 278,200 acre-feet (AF), be treated as the equivalent of 300 AF of active capacity. Payment dates in Articles 10 and 11 of the contract have been revised to reflect that the contract did not take effect until after the 2007 irrigation season.

This letter also serves as written notice of my acceptance of the evidence provided pursuant to Article 26(h) Confirmation of Contract in the General Provisions of the repayment contract that Osprey is a legally constituted entity and that the contract is lawful, valid, and binding on both parties.

I appreciate your many efforts, which were essential for the successful negotiation and execution of the repayment contract and partial assignment. If you have any questions regarding the contract, please contact Mr. Ryan Patterson at 208-378-5340 or Mr. Larry Parsons at 208-378-5346.

Also enclosed is a billing for \$600 for the operation and maintenance (O&M) charge that is due on or before April 1, 2008, pursuant to Article 11. The estimated O&M rate for Lucky Peak contractors for 2008 is \$2.00 per AF. If you have any questions regarding the billing, please contact Ms. Kay Henson at 208-378-5073.

Sincerely,

Acting For

J. William McDonald
Regional Director

Enclosures

cc: See next page.

cc: Continued from previous page.

cc: Mr. David Tuthill
Director
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

Lieutenant Colonel Randy L. Glaeser
Commander and District Engineer
U.S. Army Corps of Engineers
201 N. Third Avenue
Walla Walla, WA 99362-1876

Mr. Lee Sisco
Boise River Watermaster
6616 Overland Road
Boise, ID 83709

Mr. Randy Prillaman
President
Osprey Property Owners Association, Inc.
104 Falcon Drive
Boise, ID 83716

(w/copy of enclosed contract to each and billing to Osprey)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Boise and Lucky Peak Projects, Idaho

REPAYMENT CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND OSPREY PROPERTY OWNERS ASSOCIATION, INC.
PROVIDING FOR LUCKY PEAK RESERVOIR STORAGE

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irrigation of land and for other beneficial uses, for which the United States holds License No. 63-03618, issued on September 27, 2002, by the State of Idaho to the United States; and

3. WHEREAS, New Union Ditch Company, Limited has entered into a partial assignment to the Contractor of twenty-one and forty-two thousand eight hundred and fifty-seven one hundred thousandths of one percent (21.42857%) of New Union Ditch Company, Limited's rights and interest to receive stored water from Lucky Peak Reservoir on the Boise River in Idaho that is reflected in an amendment to Contract No. 059D101482, dated August 16, 2005, between New Union Ditch Company, Limited and the United States, hereinafter called the "New Union contract," which assigned portion is hereinafter called the "Osprey assigned portion of the New Union contract;" and

4. WHEREAS, the Contractor desires to enter into a repayment contract for the use of Lucky Peak Reservoir stored water and to make available said stored water in the event senior downstream water right users could limit the Contractor's use of its presently held natural flow water rights from Minneha and Corral Creeks and any water rights the Contractor may hold in the future; and

5. WHEREAS, the United States Army Corps of Engineers has concurred with the United States Bureau of Reclamation entering into contracts for stored water from Lucky Peak Reservoir to be used for miscellaneous irrigation purposes, including the irrigation of lawns, gardens, parks, and landscaping and delivered through a municipal delivery system; and

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

DEFINITIONS

6. Where used in this Contract, the terms:

(k) "Watermaster" shall mean the person appointed by the official of the Department of Water Resources to administer the delivery of water from the Boise River and its tributaries within Water District 63 in accordance with Idaho Code, Title 42, Chapter 6.

(l) "Year" shall mean the period of January 1 through the following December 31.

**TERM OF CONTRACT AND TERMINATION OF THE OSPREY ASSIGNED PORTION
OF THE NEW UNION CONTRACT**

7. This Contract shall remain in effect as long as the Contractor pays the full annual charges and any and all other amounts owing under this Contract: Provided, That it may be terminated at any time by mutual consent of the parties hereto. The Osprey assigned portion of the New Union contract is replaced by this Contract and is no longer of any force and effect.

WATER TO BE AVAILABLE TO THE CONTRACTOR

8. The Contracting Officer will make available to the Contractor stored water accruing to ten thousand seven hundred and eighty-four one hundred thousandths of one percent (0.10784%) of the active capacity of the Reservoir within the limits and upon the terms provided in this Contract. This percent shall, so long as the Reservoir has an active capacity of 278,200 acre-feet, be treated as the equivalent of 300 acre-feet of active capacity. The latter figure of active capacity may be adjusted from time to time by the Contracting Officer whenever there are determinations as a result of standard procedures that the active capacity is other than as stated above.

PLACE OF DELIVERY AND MEASUREMENT AND OF USE OF WATER

9. Up to 300 acre-feet of water from storage space in the Project each year shall be made available for beneficial use by senior downstream water right users in the event action is taken to limit the Contractor's use of its presently held natural flow water rights from

OPERATION AND MAINTENANCE CHARGE

11. (a) In addition to the construction charge established in Article 10, the Contractor shall pay to the Contracting Officer, so long as this Contract remains in effect and in advance on or before April 1 of each year, beginning with April 1, 2008, the Contractor's share, based upon its percentage of active capacity, of the estimated cost of operation and maintenance of the Project as determined by the Contracting Officer for the upcoming year. Written notice of the Contractor's share of the estimated costs of operation and maintenance of the Project shall be delivered by the Contracting Officer to the Contractor no later than February 1 of each year.

(b) Whenever, in the opinion of the Contracting Officer, funds so advanced will be inadequate to operate and maintain the Project, he may give a written supplemental operation and maintenance charge notice stating therein the amount of the Contractor's share, based upon its percentage of active capacity, of additional funds required as determined by the Contracting Officer, and the Contractor shall advance that additional amount on or before the date specified in the supplemental notice. Provided, however, except for an emergency situation as defined in the Standard Operating Procedures for the Project, the payment date specified in the supplemental notice shall be at least 90 days from the date of delivery of the notice to the Contractor. If funds advanced by the Contractor under this article exceed the Contractor's share of the actual cost of the operation and maintenance of the Project for the year for which advanced, the surplus shall be credited on the operation and maintenance charges to become due for succeeding years. Upon written request from the Contractor, the Contracting Officer shall provide a written accounting each year to the Contractor of the costs to be paid by the Contractor pursuant to subarticles (a) and (b) of this article.

an official notification letter at 180-days past due indicating the debt will be referred to the Secretary of the Treasury for collection in accordance with the Debt Collection Improvement Act of 1996.

MEDIUM FOR TRANSMITTING PAYMENTS

14. (a) All payments from the Contractor to the Contracting Officer under this Contract shall be by the medium requested by the Contracting Officer on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the Contracting Officer.

(b) Upon execution of the Contract, the Contractor shall furnish the Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts owing under this Contract.

RIGHTS TO BENEFICIAL USE OF WATER

15. The beneficial use of the water under this Contract shall be governed by the Federal Reclamation laws and the laws of the State of Idaho, as they may at any time apply to this Contract.

WATER SUPPLY AND OPERATION OF THE RESERVOIR

16. (a) As of the date of this Contract, the United States holds License No. 63-03618, issued on September 27, 2002, by the State of Idaho to the United States for the storage of 307,000 acre-feet per annum of the waters of Boise River in Lucky Peak Reservoir. The primary purpose of the Reservoir is for flood control, for which it will be operated, in accordance with the Memorandum of Agreement between the Department of the Army and the Department of the Interior, dated November 20, 1953, and as it may be amended, the Act of August 24, 1954 (ch. 909, 68 Stat. 794), the 1954 Supplemental Arrowrock and Anderson Ranch Reservoir contracts approving the Boise River operating plan, and the Water Control Manual for

(c) All space in Lucky Peak Reservoir shall be operated with like priority as to storage rights and all space will be treated proportionately; and the Contracting Officer reserves the privilege of granting to others holdover rights and of itself exercising such holdover rights as to any unsold space that are not inconsistent with the rights granted to the Contractor under this Contract. While the Contractor's storage water rights are defined in terms of active capacity in Lucky Peak Reservoir, the Contracting Officer shall have the right, without change in the Contractor's obligations with respect to storage rights, to store water accrued to those rights in any storage capacity available to it or to supply a like amount of water from other sources, by exchange or otherwise, so long as delivery for the Contractor of all stored water to which it is entitled under this Contract is not in anywise impaired. In determining the amount of stored water available, losses incidental to storage will be prorated equally over all water in storage in a given reservoir; and, in determining the amount of stored water delivered, the point of measurement shall be the outlet works from which the delivery is made.

(d) While the Lucky Peak Reservoir is being operated and maintained by the United States, it will operate the Reservoir to the end of delivering all the water to which the Contractor is entitled under this Contract within the capacity limits of the Reservoir and having regard for other existing rights which must be supplied therefrom. Deliveries of stored water shall be limited at any time to the amount which can be delivered by means of the Contractor's proportionate share of the outlet capacity, taking into account the requirement of passing through the Reservoir water belonging to prior rights and the physical limitation of the existing outlet works. The Contractor shall conform its diversions to the control of the stream as established by the Watermaster.

(e) The Contractor hereby releases the United States and agrees to hold the United States free and harmless from all damage claims that might result from the diversion into

negligence of officers, agents, or employees of the United States, or other causes beyond the control of the Contracting Officer, then, except as provided in Article 23 of this Contract, no liability shall accrue against the United States or any of its officers, agents, or employees for damage, direct or indirect, arising therefrom.

REMEDIES FOR DEFAULTS BY THE CONTRACTOR

18. (a) The Contracting Officer reserves the right to refuse to make available water to the Contractor pursuant to this Contract in the event that the Contractor is in default of any of its obligations under Articles 1 through 17 and 19 through 24 of this Contract and fails, after ninety (90) days written notice from the Contracting Officer, to remedy the said default. In this event, the Contracting Officer may also exercise against the Contractor any and all of his other rights and remedies for breach of contract by the Contractor.

(b) The payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract. The Contracting Officer shall not make water available to the Contractor through Project facilities during any period in which the Contractor is in arrears in the advance payment of any operation and maintenance charges due the United States or in arrears for more than 12 months in the payment of any construction charges due the United States. The Contractor shall not make available water under the terms and conditions of this Contract for lands or parties that are in arrears in the advance payment of operation and maintenance charges or in arrears more than 12 months in the payment of construction charges as levied or established by the Contractor.

WAIVER OF DEFAULT

19. The waiver by either party to this Contract as to any default shall not be construed as a waiver of any other default or as authority of the other party to continue such default or to

OPINIONS AND DETERMINATIONS

23. (a) Where the terms of this Contract provide for actions to be based upon the opinion or determination of either party to this Contract, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each opinion or determination by either party shall be provided in a timely manner. Nothing in this subarticle is intended to or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or determination implementing a specific provision of Federal law embodied in statute or regulation.

(b) The Contracting Officer shall have the right to make determinations necessary to administer this Contract that are consistent with the provisions of this Contract, the laws of the United States and of the State of Idaho, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

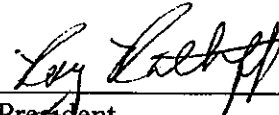
COMPLIANCE WITH LAWS, RULES AND REGULATIONS

24. (a) The parties agree that water storage, delivery or use pursuant to this Contract is subject to the laws of the State of Idaho, Federal law, and Federal Reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law, subject to any limitations resulting from the nature of the Project as a U.S. Army Corps of Engineers facility.

(b) By entering into this Contract, the Contractor does not waive its rights to contest the validity or application of any Federal law or regulation in connection with the performance of the terms and conditions of this Contract; Provided, That the Contractor agrees to

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

**OSPREY PROPERTY OWNERS
ASSOCIATION, INC.:**

By 
President

ATTEST:

By 
Secretary

THE UNITED STATES OF AMERICA:

By 
Regional Director
PN Region
Bureau of Reclamation
1150 N. Curtis Road, Suite 100
Boise, ID 83706-1234

Acting For

GENERAL PROVISIONS – BOISE AND LUCKY PEAK PROJECTS

The Contractor, as referred to in the following Standard Contract Articles, shall be the Osprey Property Owners Association, Inc.

CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

(a) The expenditure or advance of any money or the performance of any obligation of the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

(b) No Member of or Delegate to the Congress, Resident Commissioner, or Official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

(c) 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 right or interest therein by either party shall be valid until approved in writing by the other party.

BOOKS, RECORDS, AND REPORTS

(d) The Contractor shall establish and maintain accounts and other books and records pertaining to the administration of the terms and conditions of this contract, including the Contractor's financial transactions; water supply data; the water users' land-use (e.g. crop census), 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 contract 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 contract.

PROTECTION OF WATER AND AIR QUALITY

(e) (1) Project facilities used to make available and deliver water for the Contractor shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: Provided, That the United States does not warrant the quality of the water delivered for the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

(2) The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Idaho; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or project water provided by the Contractor within the Contractor's Project Water Service Area.

(3) This article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

EQUAL EMPLOYMENT OPPORTUNITY

(f) During the performance of this contract, the Contractor agrees as follows:

arrangements for Federal financial assistance which were approved before such date. The Contractor 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 the Contractor shall be investigated by the Contracting Officer's Office of Civil Rights.

CONFIRMATION OF CONTRACT

(h) The Contractor shall furnish to the Contracting Officer evidence that pursuant to the laws of the State of Idaho, the Contractor is a legally constituted entity and the contract is lawful, valid, and binding on the Contractor. This contract shall not be binding on the United States until such evidence has been provided to the Contracting Officer's satisfaction. The Contracting Officer shall provide the Contractor written notice of the Contracting Officer's acceptance of such evidence. The Contracting Officer represents that he is authorized to execute this contract and perform all obligations of the Contracting Officer hereunder:

CHANGES IN CONTRACTOR'S ORGANIZATION

(i) While this contract is in effect, no change may be made in the Contractor'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 the Contractor under this contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

CONTRACT DRAFTING CONSIDERATIONS

(j) Articles 1 through 26 of this Contract have been drafted, negotiated, and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party shall be considered to have drafted the stated articles.