

28

PAGE DOCUMENT

AGREEMENT FOR TRANSFER OF ORCHARD MESA DRAIN 1-1

Contract No. 10-LM-40-03530

THIS AGREEMENT (Agreement) is made this 9th day of February, 2010 between the United States of America, the Orchard Mesa Irrigation District and the City of Grand Junction.

The United States acts in pursuance of the Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof or supplementary thereto, and the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 472), acting by and through the Bureau of Reclamation, Department of the Interior, hereinafter referred to as the "United States", represented by the officer executing this Agreement.

The Orchard Mesa Irrigation District, hereinafter referred to as "the District", is a Colorado public corporation.

The City of Grand Junction, hereinafter referred to as the "City", is a Colorado home rule city, authorized by Article XX of the Colorado Constitution and the City's home rule charter, and acts through its City Manager.

RECITALS:

A. The United States and/or the District represent that they own Orchard Mesa Drain 1-1 and its associated easements, right-of-ways and interests in land (collectively "Drain 1-1"), as part of the Orchard Mesa Division of the Grand Valley Project. The United States has not maintained or operated Drain 1-1 as an urban storm water drain (36 Stat. 835); however, it has been used by adjacent landowners as such over the years, without authorization from the United States.

B. The City is an urban service provider. One of the services provided by the City, in portions of the City, for its citizens, is storm water drainage.

C. The District operates and maintains Drain 1-1 under the provisions of a contract with the United States, Contract No.14-06-400-326 dated October 4, 1955, and other contracts supplementary or amendatory thereto (collectively, the United States-District Contract). For purposes of historical records and in order to establish maintenance standards, the United States-District Contract is attached as **Exhibit A** and incorporated herein by reference.

D. Drain 1-1 is described by the United States as a United States drainage facility associated with the Orchard Mesa Division of the Grand Valley Project, State of Colorado. The Drain 1-1 facility is a series of drainage ditches constructed and/or reconstructed by the United States. The District operates and maintains the Orchard Mesa Division of the Grand Valley Project on behalf of the United States.

E. The original purpose of Drain 1-1 was to collect irrigation return flows of agricultural water from laterals associated with the Orchard Mesa Division of the Grand Valley Project, which consist of seepage, surface drainage and unused waters, from the lands served by the Orchard Mesa Division of the Grand Valley Project ("Irrigation Drainage"). The United States and the District have concluded that Drain 1-1 currently carries a large volume of unauthorized storm water discharges from streets, undeveloped areas and residential and light commercial subdivisions within the City limits. The balance of Drain 1-1's volume is from Irrigation Drainage.

F. Local governments, as part of the land use and development review processes, require that developers plan for storm water drainage. Historically, developers have constructed storm water discharges into Drain 1-1 without authorization from the United States. The United States has determined that it is not authorized to operate and maintain Drain 1-1 for non-agricultural use.

G. In order to accommodate the storm water drainage needs of the community and recognizing that residential, commercial and other development will continue to expand into the area historically served

by Drain 1-1, the City has indicated its willingness to, pursuant to the terms of this written Agreement, accept future ownership, maintenance and operational control of Drain 1-1, as specifically described in the Orchard Mesa Drain 1-1 Exhibit Map, attached hereto as **Exhibit B** and incorporated herein by reference.

H. The United States and the District has determined that ownership of Drain 1-1 is no longer necessary and that the capacity for Irrigation Drainage may be preserved by transferring ownership to the City while reserving a right to continue to discharge Irrigation Drainage into Drain 1-1.

NOW, THEREFORE, the parties agree as follows:

1. With respect to the United States, the parties agree as follows:

A. The United States shall execute and deliver a quit claim deed to the City for all of its right, title, and interest in Drain 1-1, as described in this Agreement, except as may otherwise be stated herein. The parties further agree that the District shall also execute a quit claim deed to the City for any right, title, and interest it may have in Drain 1-1, except as may otherwise be stated herein. The quit claim deeds shall be in the form attached hereto as **Exhibits C and D**, and shall be collectively referred to herein as the "Quit Claim Deeds."

B. The United States has conducted a Hazardous Waste Survey for Drain 1-1. The survey, dated September 6, 2009, is attached as **Exhibit E** and incorporated herein by reference.

C. The United States declares, states and affirms that it and its employees and agents are aware of no other data or information showing that Drain 1-1 contains any materials or substances in quantities regulated or prohibited by any federal or State of Colorado law, including but not limited to, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSA) or oils, gasoline or other hydrocarbons and/or petrochemicals. Effective on the date of delivery of the Quit Claim Deeds to the City, the United States shall not be liable to the City for damages of any kind arising out of any act, omission, or occurrence relating to Drain 1-1, except for damages caused by acts of negligence committed by the United States or by its employees, agents or contractors prior to the date of delivery of the Quit Claim Deeds ("U.S. Pre-Delivery Damages"). Nothing herein shall be deemed to increase the liability of the United States beyond that currently provided in the Federal Tort Claims Act, 28 U.S.C. 2671, et. seq.

D. The United States and the District agree that prior to April 1, 2010 they shall provide maintenance to Drain 1-1 that shall consist of:

1. removing all vegetation to within 6" of ground level;
2. treating all trees and brush larger than 1" diameter trunks with herbicide; and
3. removing any man made obstruction or debris within the drain with exception of existing irrigation pumps/associated pipe; patios, etc..

2. With respect to the City, the parties agree as follows:
 - A. Effective on the date of delivery of the Quit Claim Deeds to it, the City agrees to accept liability for and relating to any and all loss or damage of every description or kind whatsoever from the City's operation and maintenance of Drain 1-1 after the date of delivery.
 - B. On and after the date of delivery of the Quit Claim Deeds to it, the City agrees to accept existing amounts and patterns of Irrigation Drainage water into Drain 1-1, until such time that there is no Irrigation Drainage to discharge. The point of discharge of the Irrigation Drainage into Drain 1-1 will occur at the point identified on Exhibit B as the "Point of Irrigation Discharge". The maximum amount of the Irrigation Drainage is estimated to be 20 c.f.s. (cubic feet per second); provided, however, that the parties acknowledge that such amount is an estimate and the amount of actual Irrigation Drainage may exceed such estimated amount. The City may modify the alignment of Drain 1-1, as shown on Exhibit B, provided that the new alignment shall be designed and constructed in a manner that will accept the Irrigation Drainage discharged to Drain 1-1 by the District.
 - C. The City agrees, as allowed and authorized by law, that Drain 1-1 is quitclaimed by the United States and the District pursuant to the Quit Claim Deeds and acquired by the City on an "AS-IS, WHERE-IS" basis with no representations, warranties or covenants of any kind (other than what is stated in Paragraph 1.C., above, and in Paragraph 3.C., below), express or implied, either oral or written, made by the United States or the District, or any agent or representative of such parties, including without limitation: (i) the physical or structural condition of Drain 1-1; (ii) the compliance of Drain 1-1 with any laws, ordinances, or regulations of any federal, state, local or other governmental entity; (iii) title to Drain 1-1; and (iv) the suitability or fitness of Drain 1-1 for any purpose, including without limitation use as a storm water facility, all of which representations, warranties and covenants the United States and the District hereby expressly disclaim.
 - D. The City agrees to assume all costs incident to the operation and maintenance of Drain 1-1, subsequent to the date the Quit Claim Deeds are delivered to the City, except for the maintenance matters described in Paragraph 1.D., above.
3. With respect to the District, the parties agree as follows:
 - A. Effective on the date of delivery of the Quit Claim Deeds to the City, the District shall have no further obligation, under the United States-District Contract or otherwise, to operate or maintain Drain 1-1, except for the maintenance matters described in Paragraph 1.D., above.. The District agrees that it will, on an as-needed basis and for a period of two (2) years after the effective date of this Agreement, consult with the City, at no cost to the City, regarding the operation and maintenance of Drain 1-1. Such consultations shall be for the purpose of answering questions the City may have regarding the operation and maintenance of Drain 1-1, and the District shall not be obligated to perform any operation, maintenance, repair or other work on or with respect to Drain 1-1 as part of such consultations. The District further agrees to provide the City with copies of any and all maps, plats, drawings and/or other documents in its possession related to the operation and maintenance of Drain 1-1.
 - B. After the Quit Claim Deeds are delivered to the City, the District shall be entitled to continue to discharge Irrigation Drainage of agricultural water into Drain 1-1 in connection with the operation of the Orchard Mesa Division of the Grand Valley Project, pursuant to the provisions of Paragraph 2.B., above. Such Irrigation Drainage may continue for as long as the District and/or the United States operates (or is contracted to operate under similar terms and conditions as of the date of this Agreement) the Orchard Mesa Division of the Grand Valley Project. The parties acknowledge that the Irrigation Drainage discharge amount set forth in

Paragraph 2.B. is an estimated amount, and that the actual amount discharged may vary from such estimated amount. The City shall not impose any charges, fees or other costs against the District or the United States for Irrigation Drainage discharges into Drain 1-1.

C. Effective on the date of delivery of the Quit Claim Deeds to the City, the District shall not be liable to the City for damages of any kind arising out of any act, omission or occurrence relating to Drain 1-1, except for damages caused by acts of negligence committed by the District or its employees or agents prior to the date of delivery of the Quit Claim Deeds ("District Pre-Delivery Damages"). The District shall indemnify the City and hold the City harmless from any and all District Pre-Delivery Damages. Nothing herein shall be deemed to be a waiver, extension, or modification of any statutes of limitation, governmental immunities or other defenses relating to any alleged acts of negligence by the District.

4. With respect to this Agreement, all parties agree:

A. The execution and delivery of the Quit Claim Deeds and the other obligations of the parties under this Agreement shall be done and performed as soon as reasonably possible. The parties shall schedule a mutually agreeable date for delivery of the Quit Claim Deeds, and the executed Quit Claim Deeds shall be delivered to the City on such date.

B. This Agreement shall be binding on the successors and assigns of the parties hereto, and all persons claiming through the parties.

C. Each party warrants and represents to the other that such party has taken all actions necessary to make this Agreement a valid obligation binding upon the party, and that all requirements of any applicable law, regulation, order, Charter, ordinance or statute have been met. By signing below, each party warrants that it is authorized to sign on behalf of the party that he/she represents.

D. This Agreement constitutes the complete and entire agreement of the parties.

E. This Agreement is for the benefit of the parties; any direct or indirect benefit to a third party shall be deemed incidental.

F. Failure of any party to enforce any provision of this Agreement shall not act as a waiver to prevent enforcement of the same provisions at some later time.

G. This Agreement was produced as a result of negotiations between the parties and shall not be construed against any party as the drafter of this Agreement.

H. This Agreement shall be effective on the last date that it is executed by any of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

UNITED STATES OF AMERICA

ORCHARD MESA IRRIGATION DISTRICT

By: *[Signature]*
Larry Walkoviak, Regional Director
Upper Colorado Region
Bureau of Reclamation
Department of the Interior

By: *[Signature]*, President

APPROVED

ASSISTANT REGIONAL DIRECTOR

[Signature]
Regional Solicitor's Office



CITY OF GRAND JUNCTION

ATTEST:

By: *[Signature]*
Laurie M. Kadrieh, City Manager

[Signature]
Stephanie Tuin, City Clerk

- Exhibit A: United States-District Contract
- Exhibit B: Orchard Mesa 1-1 Drain Map
- Exhibit C: Quit Claim Deed – United States
- Exhibit D: Quit Claim Deed - District
- Exhibit E: Hazardous Waste Survey

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

GRAND VALLEY PROJECT, COLORADO
ORCHARD MESA DIVISION

AMENDATORY CONTRACT BETWEEN THE UNITED STATES OF AMERICA, GRAND VALLEY
WATER USERS ASSOCIATION, AND THE ORCHARD MESA IRRIGATION DISTRICT

This amendatory contract, made this 4th day of October, 1955, under the provisions of the Act of Congress of June 17, 1902, (32 Stat. 388) and acts amendatory thereof or supplementary thereto, hereinafter referred to as the Federal Reclamation Law, between the United States of America, hereinafter referred to as the United States, acting in this behalf by the Regional Director of Region 4, Bureau of Reclamation, Department of the Interior, hereinafter referred to as the Regional Director; the Grand Valley Water Users' Association, a corporation organized and existing under the laws of the State of Colorado and having its principal office at Grand Junction, Colorado, hereinafter referred to as the Association; and the Orchard Mesa Irrigation District, an irrigation district organized under the laws of the State of Colorado, having its principal office at Grand Junction, Colorado, hereinafter referred to as the District.

WITNESSETH, That,

2. WHEREAS, the United States, the Association, and the District entered into certain contracts dated February 18, 1922, and September 10, 1931, hereinafter referred to as the Government-District contract, for the reconstruction of the irrigation works of the District and for the repayment to the United States by District of \$1,004,840 including operation and maintenance charges, penalties, and interest of \$5,072 expended by the

United States in reconstructing the irrigation works of the District, which consisted principally of the following: the 800 second-foot capacity Colorado River Siphon, Power Canal enlarged to 800 second-foot capacity, Pumping Plant, Tailrace, Distribution Canal No. 1 and enlargement, Distribution Canal No. 2, Wasteways, and Drains, and

3. WHEREAS, certain other irrigation works constructed by the United States in connection with the Grand Valley Project are being jointly used for the diversion and carriage of water for the Association and the District, and consist of the Grand Valley Diversion Dam and appurtenant works and the Government High Line Canal, with an initial capacity of 1,425 second-feet, from the Diversion Dam to a point near the East Portal of Tunnel No. 3, and

4. WHEREAS, the Association is interested in the works described in Article 3 hereof and the irrigation and other works constructed by the United States in connection with said Grand Valley Project by reason of having entered into contracts with the United States for the payment of the costs of said irrigation and other works of said project, and desires to cooperate with the District so far as its interest in the said project will permit, and

5. WHEREAS, the District, having elected to come within the provisions of the Colorado Irrigation District Law of 1921, as amended, desires to make certain changes in said Government-District contract to facilitate its operations.

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

SCOPE OF AMENDATORY CONTRACT

7. This contract supersedes the Government-District contract described in Article 2 hereof.

INDEBTEDNESS OF DISTRICT AND TERMS OF PAYMENT

8. That, as of the date hereof, the unpaid and unaccrued construction charges which remain to be paid by the District to the United States, and which constitute a general obligation of the District, amount to \$450,634.76. The District agrees to pay this amount to the United States in sixteen consecutive annual installments as follows: 15 annual installments of \$29,921.90 and one, the last, annual installment of \$1,806.26. Such installments shall be due and payable on December 1 of each year commencing on December 1, 1955.

VALUATION AND CLASSIFICATION OF DISTRICT LAND FOR ASSESSMENT PURPOSES

9. The District is authorized to classify and reclassify lands within its boundaries from time to time and in such a manner that in its judgment will give consideration to the quality of such land and the purposes for which it is used or may become adapted, and to place valuations thereon for annual assessment and repayment purposes to meet its obligations to the United States under this contract; Provided, that the annual payments required by Article 8 hereof shall not be affected by any such classifications or reclassifications; that no land heretofore designated for agricultural purposes and classified as productive shall be reclassified as permanently unproductive except for residential or industrial purposes without the consent of the Regional Director; and that the results of each reclassification made by the District shall be promptly

reported to the Regional Director and a satisfactory record thereof shall be maintained in the files of the District. Subject to the foregoing, the District is authorized:

(a) To reclassify the lands within the District whenever it deems such action is necessary and in the best interest of the District, but not more often than once during any calendar year, into the classes designated as follows:

1. Lands used for agricultural purposes:

- Class 1 - Fruit land
- Class 1A - Potential fruit land
- Class 2 - Good agricultural land
- Class 3 - Fair agricultural land
- Class 4 - Poor agricultural land
- Class 5 - Temporarily unproductive land

2. Lands used for other purposes:

- Class 1B - Residential tracts and subdivisions
- Class 1C - Industrial tracts

(b) To determine the acreages, sizes of lots or tracts, and establish valuations on and for each of the above classes for assessment, allocation, and delivery of irrigation water, or other purposes to meet the requirements of the District.

(c) To make and certify unequal annual tax assessments on the different classes of land, Provided, that each such annual assessment shall be at a uniform rate of levy per dollar of valuation placed upon the lands within the District, and, Provided further, that no assessments to meet the repayment obligation of the District to the United States shall be levied against any Class 5 land while so classified.

OPERATION AND MAINTENANCE CHARGES AND RENTALS

10. The provisions of this contract in regard to the levy and collection of assessments for the purpose of raising revenues to meet the payments provided for in Article 8 hereof shall also be applicable in the raising of revenues to meet the cost of operating and maintaining the works of the District. No water shall be rented by the District without the consent of the Regional Director, and a portion of any such rental collected, as fixed by the Regional Director, shall be payable to the United States as a part of the construction charges, such payments to be credited upon the last construction charge installments due the United States under Article 8 hereof.

CARRIAGE OF DISTRICT'S WATER

11. The District shall continue to have the permanent right to have not to exceed 400 second-feet of water, which at the time is actually flowing in the river exclusive of any stored water claimed by any party other than the District, diverted at the Grand Valley Diversion Dam into and through the Government High Line Canal to the East Portal of Tunnel No. 3 at all times during the year when the United States or its assigns is carrying water for its own use in said canal. In the event, however, that the actual available supply from the natural flow of the Colorado River for the District and the Grand Valley Project at the diversion dam and headworks constructed for said project shall be reduced as a result of natural causes to a quantity less than 1,305 second-feet, or the available capacity of the canal becomes insufficient to carry 1,305 second-feet in addition to 120 second-feet, which latter amount of water is diverted and carried in said canal for the Mesa County Irrigation District and the

Palisade Irrigation District under two certain contracts heretofore made by the United States, dated respectively June 10, 1918, and May 31, 1918, then in that event, the District shall be entitled only to such proportionate part of the water available as determined by the relation which 400 bears to 1,305, or 30.65 per centum, and the District shall accept such proportionate part as full satisfaction of its claim for water during such periods of shortage or reduced capacity of said canal, and it is understood that this contract is made subject to the rights of said two districts to have their water carried in said canal as provided in said contracts.

CARRIAGE OF PROJECT POWER WATER

12. In order that the existing power development on Grand Valley Project be not impaired and that the project be left in as favorable a position in respect to power development as it now is, the District agrees to continue to divert and carry its water through the Colorado Siphon and the Power Canal to a point at or near the existing pumping plant of the District, which siphon and canal have been constructed of sufficient capacity to safely carry 800 second-feet of water. The United States and its assigns have a permanent right to have up to but not to exceed 400 second-feet of project water carried through the works of the District to said point at or near the present pumping plant of the District, and through the tailrace and spillway of the District to the Colorado River at all times throughout the year, free of any cost or charges whatsoever, and also a permanent right to construct and maintain upon the right-of-way of the District a forebay and other structures appurtenant to the Grand Valley Power Plant, together with the free right of ingress and egress

on, along, and across the right-of-way acquired for the works and Power Canal from Tunnel No. 3 to the power plant. The District shall maintain said works in proper condition to carry said water at all times, and if it shall fail or neglect so to do, the United States or its successors in interest may maintain or repair the same and charge the cost thereof to the District, which cost the District agrees to promptly pay. If through no fault of the District the capacity of the Power Canal becomes less than 800 second-feet, then the capacity thereof shall be equally divided between the District and the United States or its assigns, but this shall not relieve the District of any of its obligations or curtail the rights and remedies of the United States or its assigns elsewhere contained in this article in respect to the carriage and delivery of said project water by the District. When the District's own needs do not require the use of all of its water, the United States or its assigns may use so much thereof as is not needed by the District.

CONTROL OF CERTAIN WORKS

13. The works built for the District pursuant to the Government-District contract at or near the East Portal of Tunnel No. 3 including the wasteway at Station 3/00.1 on the Colorado River Siphon for the diversion, control, and delivery of water from the Government High Line Canal into the siphon, are to be maintained by and at the sole expense of the District, but these works shall remain at all times under the exclusive control of the United States or the Association at such times as it is operating the Grand Valley Project.

LIABILITY RELATIVE TO CARRIAGE AND DELIVERY OF WATER

14. Neither the United States, the Association, nor the District shall be liable for failure to carry or deliver the water of the other under this contract caused by insufficient supply of water hostile diversion, drouth, nor on account of any other distribution than that herein stipulated for, directed, or ordered to be made by any valid or subsisting order or decree of a competent court, interruption of service made necessary by repairs, damages caused by floods, acts of hostility or unavoidable circumstances, nor for loss of crops or other damage caused by nondelivery of water.

UNITED STATES CONTRACT FUND

15. The District agrees that the County Treasurer who is ex-officio District Treasurer shall keep a United States Contract Fund Account in addition to any accounts now required by law to be kept by him. Said United States Contract Fund Account shall be treated and handled similarly in all respects to the bond fund account provided by law to be kept by said County Treasurer, and shall consist of all money received from the assessment, levy, and collection of taxes to meet the payments required to be made by the District to the United States under this contract. Said County Treasurer is hereby authorized and directed without further action by or authority from the District to make payments from said United States Contract Fund direct to the United States, when funds are available either in whole or in part to meet the payments specified in this contract, as and when said payments are due, together with any interest which may be required under the provisions of this contract.

OPERATION AND MAINTENANCE OF DISTRICT WORKS

16. The District will at its sole cost and expense continue to operate and maintain the works constructed or reconstructed by the United States. The principal features of which works are described in Article 2 hereof.

PAYMENT OF OPERATION AND MAINTENANCE COST BY THE DISTRICT

17. In addition to payment of the construction charges to the United States, as provided in Article 8 hereof, the District agrees to pay to the Association or its assigns each year its proportionate part, or $400/1425$ ths (28.07 per cent) of the cost of operating and maintaining the jointly used facilities described in Article 3 hereof and the cost of the repairs, replacements, and betterments thereto. The total of such annual costs due under this article shall be payable in advance as set forth in a statement to be furnished on or before October 1 of each year by the Association or its assigns and shall be due and payable to the Association or its assigns on December 31 of the next calendar year after such notice. If in any operating year it becomes apparent in the opinion of the Association that the amount so advanced by the District is insufficient to meet the District's proportionate part of the actual cost of operation and maintenance of such jointly used facilities for the then current year as determined by the Association, the District shall advance on thirty days' notice the additional amount necessary to finance its proportionate part of the actual operation and maintenance work for that year. In case the operation and maintenance charges advanced by the District are more than the actual operation and maintenance cost for any year, appropriate credit shall be given the District upon the next year's operation and maintenance charges. Should the District fail to pay operation and

maintenance charges when due as provided in this article, delivery of water will be refused until such payments are made.

INTEREST UPON DELINQUENCY IN PAYMENT

18. Should the District fail to pay the annual installments provided for in Article 8 of this contract or if the District shall fail to pay any other sums due the United States as provided for in this contract, such sums shall bear interest at the rate of 6 per cent per annum until paid, and the District hereby agrees to pay such interest.

LEVI AND ASSESSMENT OF TAXES BY DISTRICT

19. The District agrees that it will cause to be levied and collected all necessary assessments and will use all the powers and resources of the District, including the taxing power of the District and the power to withhold delivery of water, to collect and pay to the United States and the Association all charges provided in this contract in full on or before the date that the same become due.

DEFAULT BY INDIVIDUAL LANDOWNERS

20. The District as a whole is obligated to pay to the United States the full amount herein agreed upon according to the terms stated, regardless of any individual default in the payment of any assessment levied by the District.

REFUSAL OF WATER IN CASE OF DEFAULT

21. The United States reserves the right to refuse to deliver water to the District in the event of default by the District for a period of more than one year in any payment due the United States under this contract. The United States or the District, as the case may be, shall refuse water service to all lands within the District which may be in default for more than one year in the payment of any assessment levied

The provisions of this article are not exclusive, and shall not in any manner hinder the United States from exercising any other remedy to enforce collection of any amount due hereunder.

DISTRIBUTION OF WATER BY DISTRICT

22. The District agrees in the distribution of water delivered to it through the Government High Line Canal to comply with the provisions of all laws and regulations of the United States applicable thereto and particularly the Act of February 21, 1911, (36 Stat. 925) and not to furnish or deliver to any one landowner water in excess of an amount sufficient to irrigate 160 acres of land.

EMPLOYMENT OF MANAGER OR SUPERINTENDENT

23. It is agreed that until payment to the United States for said ^{work} has been completed, the District will employ a competent manager or superintendent, the selection of such person to be subject to the approval of the Regional Director, and upon notice from the Regional Director that any manager or superintendent employed by the District is unsatisfactory, the District agrees promptly to terminate the employment of such unsatisfactory manager or superintendent and employ one approved by the Regional Director.

ACCESS TO BOOKS AND RECORDS

24. The proper officials of the District shall have full and free access to the project books and the official records of the United States and the Association so far as they relate to the matters covered by this contract, with the right at any time during office hours to make copies of and from the same; and the representatives of the United States and the Association shall have the same right in respect to the books and records of the District.

CROP AND OTHER REPORTS

25. The District shall:

(a) Install and maintain a modern set of books of accurate account, to be acceptable to the Regional Director, showing all the financial transactions of the District and furnish such financial reports and statements in such form as may be required from time to time by the Regional Director;

(b) Keep a reasonably accurate record of all crops raised and agricultural or livestock products produced under the irrigation system of the District and shall furnish the Regional Director on or before December 31 of each year a crop report, including the aforesaid data, in form prescribed by the Regional Director;

(c) When operating the project works keep each year an accurate record of the project water supply and the disposition of the same, and furnish the Regional Director with such detailed reports covering said water supply and its disposition, in such form as is prescribed by the Regional Director;

(d) When operating the project works keep such other records in such manner and form as the Regional Director may require and submit such reports based thereon as may be required from time to time by the Secretary.

PAYMENT FOR INSPECTIONS AND SPECIAL SERVICES

26. The Regional Director may cause to be made from time to time a reasonable inspection of the District works and of the books and records of the District so far as necessary to ascertain whether the terms of this contract are being faithfully executed by the District. If in any calendar year any inspections are made or special services are rendered to the District by the United States, the cost of such inspections or

special services will be paid by the District to the United States within 60 days after the bills therefor are rendered to the District.

CHANGE IN ORGANIZATION OF DISTRICT

27. While this contract is in effect, no change shall be made in the organization of the District, either by the inclusion or exclusion of lands, by consolidation or merger with another district, by proceedings to dissolve, or otherwise, except upon the written assent thereto of the Regional Director.

CONFIRMATION OF CONTRACT

28. The District agrees that upon the execution of this contract, it will proceed promptly to secure a final decree of the proper court of the State of Colorado approving and confirming this contract and decreeing and adjudging the same to be a lawful, valid, and binding general obligation of the District. The District shall furnish to the Secretary two certified copies of such decree.

MEMBER OF CONGRESS CLAUSE

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

SUCCESSORS AND ASSIGNS OBLIGATED

30. It is understood and agreed that the terms of this contract shall inure to the benefit of and be binding upon the successors in interest and assigns of the parties hereto.

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

UNITED STATES OF AMERICA

By /s/ E. O. Larson
Regional Director, Region 4
Bureau of Reclamation
Acting under authority delegated
by the Secretary of the Interior

THE GRAND VALLEY WATER USERS ASSOCIATION

By /s/ Ray Cobb
President

By /s/ Hobart Cutler
Secretary

THE ORCHARD MESA IRRIGATION DISTRICT

By /s/ Edward J. Voss
President

By /s/ Florence K. Pauly
Secretary

SEAL

SEAL



1:5,000

EXHIBIT B

Orchard Mesa Drains

-  Drain OM 1-1
-  Drains
-  Canals
-  Highways
-  Roads
-  Waterbodies

Map produced by:
U.S. Bureau of Reclamation
2764 Compass Drive
Grand Junction, Colorado 81506
phone: (970) 248-0600
Date Printed/Published: December 10, 2009
File name: GVOMDrainDisposal.mxd

Data Sources:
Reclamation, US Census Bureau
Mesa County, USGS, CDOT

DISCLAIMER : This map is meant as an aid for the operation and maintenance of irrigation facilities. This map may graphically depict property boundaries. Property boundaries are for general reference only and do not represent legal descriptions.



QUIT CLAIM DEED

The UNITED STATES OF AMERICA, acting pursuant to the provisions of the Act of June 17, 1902 (32 Stat. 388), and Acts and regulations amendatory thereof or supplementary thereto, which Acts are commonly known and referred to as Reclamation Laws, particularly, the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), GRANTOR, for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, has remised, released, conveyed, and quitclaims to the CITY OF GRAND JUNCTION, GRANTEE, a Colorado home rule municipality, 250 North 5th Street, Grand Junction, Colorado 81501, all of its right, title, and interest in and to the following described interests in real property located in Mesa County, Colorado:

Any and all easements, rights-of-way and other interests in land for a segment of the water drainage system known as Orchard Mesa Drain 1-1, a facility of the Grand Valley Project, a federal reclamation project. This segment of the drainage system is located in the north half of Section 26, Township 1 South, Range 1 West, Ute P.M. more particularly described as follows:

All that part of the Orchard Mesa Drain 1-1 situated in the north half of Section 26, Township 1 South, Range 1 West, Ute Meridian, Mesa County, Colorado, the centerline of which is described as follows:

Commencing at the Northeast 1/16 corner of said Section 26 whence the Center East 1/16 corner of said Section 26 bears S 00°03'50" E a distance of 1321.43 feet and all other bearings are relative thereto; thence S 56°48'18" E a distance of 1200.90 feet to the Point of Beginning of Orchard Mesa Drain 1-1, thence along the Centerline of Orchard Mesa Drain 1-1 the following courses and distances:

1. S 80°16'46" W a distance of 66.02 feet;
2. N 83°51'57" W a distance of 56.14 feet;
3. N 77°23'28" W a distance of 854.56 feet;
4. N 89°41'59" W a distance of 1309.12 feet;
5. N 73°14'49" W a distance of 50.59 feet;
6. N 19°30'46" W a distance of 42.37 feet;
7. N 00°15'59" W a distance of 1310.33 feet more or less to the confluence with another drain known as the Orchard Mesa Drain 1 entering said Orchard Mesa Drain 1-1 from the east.

The easements, rights-of-way and other interests in land for the Orchard Mesa Drain 1-1 encompass approximately 6.8 acres.

RESERVING TO THE GRANTOR, as provided in Paragraphs 2.B. and 3.B. of the Agreement for Transfer of Orchard Mesa Drain 1-1, Contract No. 10-LM-40-03530, dated _____, between the Orchard Mesa Irrigation District, and the United States of America ("Agreement for Transfer"), the right to continue to discharge Irrigation Drainage (as defined in the Agreement for Transfer) into Orchard Mesa Drain 1-1. This deed is intended to fulfill the terms of the Agreement for Transfer.

WITNESS the hand of the Grantor, this ____ day of _____, 20__.

UNITED STATES OF AMERICA

Approved: _____

Office of the Regional Solicitor

By: _____

Larry Walkoviak,
Regional Director
Upper Colorado Region
Bureau of Reclamation
Department of the Interior

ACKNOWLEDGMENT

State of Utah }
 } ss.
County of Salt Lake }

On the ____ day of _____, 20__, personally appeared before me _____, known to me to be the Regional Director of the Bureau of Reclamation, Upper Colorado Region, United States Department of the Interior, the signer of the above instrument, who duly acknowledged to me that he executed the same on behalf of the United States of America.

Notary Public in and for
the State of Utah
Residing at _____

(NOTARY SEAL)

My commission expires:

QUIT CLAIM DEED

The ORCHARD MESA IRRIGATION DISTRICT (District), a Colorado nonprofit corporation, GRANTOR, for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, has remised, released, conveyed and quitclaims to the CITY OF GRAND JUNCTION, GRANTEE, a Colorado home rule municipality, 250 North 5th Street, Grand Junction, Colorado 81501, all of its right, title and interest in and to the following described interests in real property located in Mesa County, Colorado:

Any and all easements, rights-of-way and other interests in land for a segment of the water drainage system known as Orchard Mesa Drain 1-1, a facility of the Grand Valley Project, a federal reclamation project. This segment of the drainage system is located in the north half of Section 26, Township 1 South, Range 1 West, Ute P.M. more particularly described as follows:

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Commencing at the Northeast 1/16 corner of said Section 26 whence the Center East 1/16 corner of said Section 26 bears S 00°03'50" E a distance of 1321.43 feet and all other bearings are relative thereto; thence S 56°48'18" E a distance of 1200.90 feet to the Point of Beginning of Orchard Mesa Drain 1-1, thence along the Centerline of Orchard Mesa Drain 1-1 the following courses and distances:

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4. N 89°41'59" W a distance of 1309.12 feet;
5. N 73°14'49" W a distance of 50.59 feet;
6. N 19°30'46" W a distance of 42.37 feet;
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WITNESS the hand of the Grantor, this ____ day of _____, 20__.

ORCHARD MESA IRRIGATION DISTRICT

By: _____
President

ATTEST:

Secretary

ACKNOWLEDGMENT

State of Colorado }
 } ss.
County of Mesa }

The foregoing Quit Claim Deed was acknowledged before me this ____ day of _____, 20__,
by _____, as President and _____
_____ as Secretary of Orchard Mesa Irrigation District, Grantor.

My commission expires:

Witness my hand and official seal.

SEAL

Notary Public

**LOW-INTENSITY
RURAL, RESIDENTIAL, CROP / AGRICULTURAL, ETC.
REAL PROPERTY QUESTIONNAIRE CHECKLIST
LEVEL I SURVEY**

EXHIBIT E

INSTRUCTIONS: Circle for each question. Explain briefly on back if a "yes" or unknown are circled. Indicate whether a Level II assessment will be recommended. Attach a legal description of the real estate property covered by this survey.

BACKGROUND INFORMATION

REGION Upper Colorado PROJECT _____

FEATURE Orchard Mesa Drain OM1-1 LOCATION Mesa County, Colorado (see attached map)

PARCEL NO. _____

DATE OF SURVEY 2008 TELE. NO. _____

OWNERS OM1-1: Drain & Easement owned by Reclamation and Orchard Mesa Irrigation District

| QUESTIONS | OWNER / OCCUPANT | | | OBSERVED DURING VISUAL INSPECTION | | |
|--|------------------|----|-----|-----------------------------------|-----------|------------|
| 1. Currently or in the past has the property, or any adjoining property, been used for industrial purposes such as: a gasoline station, motor repair facility, junkyard, landfill, or recycling facility? | Yes | No | Unk | Yes | <u>No</u> | Unk |
| 2. Are there currently or to the best of your knowledge has there been any damaged or discarded vehicle batteries, pesticides, paints, or other chemicals (disregard petroleum Products) in individual containers of greater than 25 gallons in volume, or 100 gallons in the aggregate, been stored or used at the facility or on the property? | Yes | No | Unk | Yes | <u>No</u> | Unk |
| 3. Are there currently or to the best of your knowledge has there been any chemical materials stored or used at the facility or on the property? | Yes | No | Unk | Yes | <u>No</u> | Unk |
| 4. Has fill material been brought onto the property that originated at a hazardous material or contaminated site? | Yes | No | Unk | Yes | No | <u>Unk</u> |
| 5. Are there currently or to the best of your knowledge has there been any pits, ponds, or lagoons located on the property associated with waste treatment or disposal? | Yes | No | Unk | Yes | <u>No</u> | Unk |
| 6. Are there currently or has there ever been any significantly stained soil on the property? | Yes | No | Unk | Yes | <u>No</u> | Unk |
| 7. Are there currently or has there ever been any leaking storage tanks located above or below the surface? | Yes | No | Unk | Yes | <u>No</u> | Unk |
| 8. If the property is served by a private well or non-public water system, have contaminants been identified in the well or system that exceed guidelines applicable to the water system? | Yes | No | Unk | Yes | <u>No</u> | Unk |
| 9. To the best of your knowledge have any unidentified waste Materials, hazardous substances, petroleum products, tires, automotive or industrial batteries, industrial power transformers been dumped, buried, or burned on the property? | Yes | No | Unk | <u>Yes</u> | No | Unk |
| 10. To the best of your knowledge has any of the property been used for a spray operation base, air strip, or equipment storage area? | Yes | No | Unk | Yes | <u>No</u> | Unk |
| 11. Are there currently or to the best of your knowledge has there been any structures containing asbestos located on the property? Has any asbestos been buried on the property? | Yes | No | Unk | Yes | <u>No</u> | Unk |
| 12. Is there evidence of chemical contamination e.g., vegetation different from the surrounding vegetation for no apparent reason, bare ground, sterile water bodies, etc. | Yes | No | Unk | Yes | <u>No</u> | Unk |

located on the property?

13. Are there transformer (s), capacitor (s), or hydraulic equipment located on the property? Yes No Unk Yes No Unk

PUBLIC RECORDS / HISTORICAL SOURCES INQUIRY

1. Are there any lands which fall within the three classifications and distances indicated below that are of record with any Federal Government agency? Yes No Unk

| | | | | | |
|--------------------------|-----------------|----------|-----|-----------|-----|
| National Priorities List | within 1.0 mile | (1.6 km) | Yes | <u>No</u> | Unk |
| CERCLIS List | within 0.5 mile | (0.8 km) | Yes | <u>No</u> | Unk |
| RCRA TSD Facility | within 1.0 mile | (1.6 km) | Yes | <u>No</u> | Unk |

2. Are there any lands similar to lands which fall within the four classifications and distances indicated below that are of record with any State Government agency? Yes No Unk

| | | | | | |
|--------------------------|-----------------|----------|-----|-----------|-----|
| National Priorities List | within 1.0 mile | (1.6 km) | Yes | <u>No</u> | Unk |
| CERCLIS List | within 0.5 mile | (0.8 km) | Yes | <u>No</u> | Unk |
| RCRA TSD Facility | within 1.0 mile | (1.6 km) | Yes | <u>No</u> | Unk |
| Solid Waste / Landfill | within 0.5 mile | (0.8 km) | Yes | <u>No</u> | Unk |

(Note: DOE compound and Hansen (Layton) container sites are within 1 and 2 mile distance respectively; however, both are at a lower elevation and should not affect this site. Hansen is also across the Colorado River).

Unk = Unknown

CERTIFICATION (check one)

I hereby certify that to the best of my knowledge no contaminants are present on this real estate, and there are no obvious signs of any effects of contamination.

On the basis of the information collected to complete this form, it is reasonable to conclude that there is a potential for contaminants, or the effects of contaminants present on the subject property. A "Level II Survey" will be performed.

Examiner

To the best of my knowledge the above statements are true and correct.

Signed Steykewicz Print Name 9-6-09
 Date _____ Title Steykewicz
ENV SR

Approved by _____
 Signed KATHLEEN OZGA Print Name KATHLEEN OZGA
 Date 10-6-09 Title Land & Recreation Group Chief

COMMENTS TO QUESTIONS and MISCELLANEOUS COMMENTS

- 1. Gas stations have been located along U.S. Highway 50
- 9. Discarded tires within easement; also household trash in several locations.

12 7 11 000m

12 7 11 500m

12 7 12 000m

43 25 000m

43 25 000m

43 24 500m

43 24 500m

43 24 000m

43 24 000m

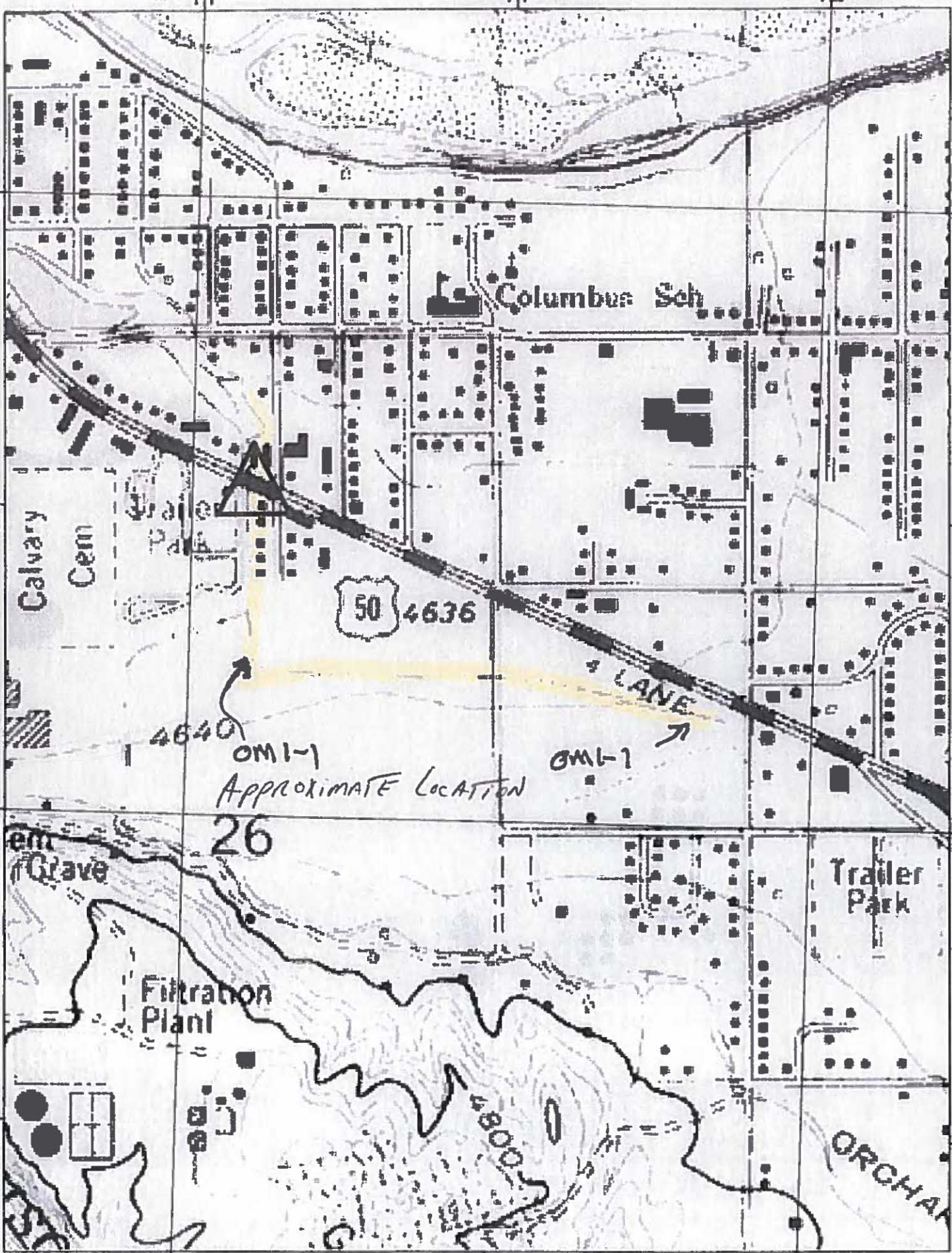
43 23 500m

43 23 500m

12 7 11 000m

12 7 11 500m

12 7 12 000m





United States Department of the Interior

BUREAU OF RECLAMATION
Upper Colorado Region
Western Colorado Area Office
2764 Compass Drive, Suite 106
Grand Junction, CO 81506-8785



IN REPLY REFER TO:

WCG-KOzga
LND-6.00

FEB 19 2010

HAND DELIVERY

Ms. Mary Lynn Bacus
Paralegal, City Attorney's Office
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501

Subject: Agreement for Transfer of Drain OM 1-1, Grand Valley Project, Colorado

Dear Ms. Bacus,

Enclosed is an original signed Agreement for Transfer of Orchard Mesa Drain 1-1 (Agreement), Contract No. 10-LM-40-03530. Also enclosed are two original signed quit claim deeds; one from the Orchard Mesa Irrigation District and one from the United States.

It is our understanding that you will have the above documents recorded and will provide the recordation information to me. Once again, thank you for all your help and assistance.

If you have questions or need additional information, please contact me at (970) 248-0649 or by email at kozga@usbr.gov.

Sincerely,

Kathleen Ozga
Lands and Recreation Group Chief

Enclosures

Cc:

Max Schmidt, Manager
Orchard Mesa Irrigation District
668 38 Road
Palisade, CO 81526
(w/o encl)