

ATTACHMENT 4

Contract No.
00-WC-20-1719-B

INSTREAM FLOW PRESERVATION AGREEMENT

by and among

U.S. BUREAU OF RECLAMATION,

U.S. FISH AND WILDLIFE SERVICE, AND

CALIFORNIA DEPARTMENT OF FISH AND GAME

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INSTREAM FLOW PRESERVATION AGREEMENT

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U.S. BUREAU OF RECLAMATION,

U.S. FISH AND WILDLIFE SERVICE, AND

CALIFORNIA DEPARTMENT OF FISH AND GAME

This Agreement, entered into by and among U.S. Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (Service), and California Department of Fish and Game (Department) (hereinafter collectively referred to as the "Parties"), is a necessary element of the proposed Saelzler Dam Fish Passage and Flow Preservation Project (Project) and serves as the mechanism to ensure that releases at Whiskeytown Dam on Clear Creek will be, at a minimum, equivalent to the releases made prior to the Project.

1.0 RECITALS

The Parties enter into this Agreement with the following understandings:

- 1.1 On March 31, 1960, Reclamation entered into an agreement with Department, entitled "Memorandum of Operating Agreement for Streamflow Maintenance for the Protection and Preservation of Fish and Wildlife and the Recreational Resources Attendant Upon Clear Creek as Affected by Whiskeytown Dam and Its Related Works and Diversions of Water Under Contracts with the United States" which provides for the bypass or release of certain flows from Whiskeytown Reservoir.
- 1.2 On May 23, 1960, Reclamation entered into separate agreements with G.E. Oaks and Townsend Flat Water Ditch Company. Both of these agreements provide that Reclamation will not store or divert any part of the waters flowing into Whiskeytown Reservoir that are required to maintain certain designated flows in Clear Creek as measured at the Igo Bridge.

- 1.3 Since approximately 1964, Reclamation has been operating Whiskeytown Dam and Reservoir in accordance with an informal agreement with Service and the National Parks Service which provides for the bypass or release of specified flows to protect, preserve, and enhance the recreational and fishery values for the Whiskeytown National Recreation Area (Parks Agreement), as well as to satisfy the flow requirements of the above-identified agreements.
- 1.4 On October 5, 1999, the U.S. Department of the Interior issued its Final Decision on Implementation of Section 3406(b)(2) of the Central Valley Project Improvement Act (Decision). The Decision assumed a minimum flow criteria for Clear Creek based substantially on the above agreements. Reclamation is currently operating Clear Creek releases to meet these criteria which is provided in Table 1.
- 1.5 Section 4.4 of the Agreement by Townsend Flat Water Ditch Company, Reclamation, and Department, dated June 24, 2000, regarding the Project, requires Reclamation to ensure that bypasses or releases at Whiskeytown Dam on Clear Creek are, at a minimum, equivalent to the bypasses or releases made pursuant to Interior's Decision.
- 1.6 Section 3406 (b)(12) of the Central Valley Project Improvement Act (CVPIA), directs the Secretary of the Interior to develop and implement a comprehensive program to provide flows to allow sufficient spawning, incubation, rearing, and out migration for salmon and steelhead trout from Whiskeytown Dam, as determined by instream flow studies conducted by Department after the fish passage problem at Saeltzer Dam is resolved and Clear Creek below Whiskeytown Dam is restored.

2.0 OBLIGATIONS

The Parties agree as follows:

- 2.1 Unless and until the bypass and release schedule specified in Table 1 of this Agreement is modified based on the results of future instream flow studies



conducted by the Department in accordance with Section 3406(b)(12) of the CVPIA, in addition to releasing the amounts of water necessary to satisfy existing or recognized senior water rights between Whiskeytown Dam and the mouth of Clear Creek, Reclamation shall at all times bypass or release over, under, around or through Whiskeytown Dam and into the natural streambed of Clear Creek immediately below said Dam, the flows of water specified in the release schedule attached hereto as Table 1 for the maintenance of fish and wildlife resources. Reclamation shall use its best efforts to ensure that those bypasses or releases are not diverted from Clear Creek for out-of-stream uses in accordance with the bypass or release schedule attached hereto as Table 1. These bypasses or releases are for instream flow purposes from Whiskeytown Dam to the mouth of Clear Creek. Reclamation shall use its best efforts to ensure that those bypasses or releases are not diverted from Clear Creek for out of stream uses.

- 2.2 As used in Table 1 attached hereto, the term "Normal Year" shall mean each year except for "Critical Dry Years," and the term "Critical Dry Year" shall be defined as it is in the Decision.
- 2.3 This Agreement supercedes the 1960 Memorandum referred to in Paragraph 1.1 above, and the Parks Agreement referred to in Paragraph 1.3, above.

3.0 SIGNATURES

- 3.1 This Agreement may be executed in counterparts. Reclamation shall retain a copy of the Agreement with all original executed signatures. Reclamation will distribute copies of the Agreement with executed signature pages to each Party within 30 days of the Agreement's execution. Each Party hereby represents and warrants that the person executing this Agreement is duly authorized to do so on its behalf.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the last date written below.

U.S. BUREAU OF RECLAMATION

Lester A. Snow
Regional Director

Date

U.S. FISH AND WILDLIFE SERVICE

Michael Spear
Manager, CA/NV Office

Date

CALIFORNIA DEPARTMENT OF FISH AND GAME

Robert C. Hight
Director

Date

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TABLE 1

WHISKEYTOWN DAM BYPASS OR RELEASE SCHEDULE		
Period	Normal Year (cfs)	Critical Year (cfs)
January 1 - October 31	50	50
November 1 - December 31	100	70