



County of Los Alamos

1000 Central Avenue
Los Alamos, NM 87544

Agenda - Final Board of Public Utilities

*Jeff Johnson, Chair; Stephen McLin, Vice-chair; Andrew Fraser,
Paul Frederickson and Kathleen Taylor, Members
Tim Glasco, Ex Officio Member
Harry Burgess, Ex Officio Member
Susan O'Leary, Council Liaison*

Tuesday, March 7, 2017

11:30 AM

1000 Central Avenue
Council Chambers

SPECIAL SESSION

Complete Board of Public Utilities agenda packets, past agendas, videos, legislation and minutes can be found online at <http://losalamos.legistar.com/Calenar.aspx>. Learn more about the Board of Public Utilities at <http://www.losalamosnm.us/gov/bcc/utilitiesboard>.

PUBLIC COMMENTS:

Please submit written comments to the Board at bpu@lacnm.us. Oral public comment is accepted during the two periods identified on the agenda and after initial board discussion on a business item, prior to accepting a main motion on an item. Oral comments should be limited to four minutes per person. Requests to make comments exceeding four minutes should be submitted to the Board in writing prior to the meeting. Individuals representing or making a combined statement for a large group may be allowed additional time at the discretion of the Board. Those making comments are encouraged to submit them in writing either during or after the meeting to be included in the minutes as attachments. Otherwise, oral public comments will be summarized in the minutes to give a brief succinct account of the overall substance of the person's comments.

1. CALL TO ORDER

2. PUBLIC COMMENT

This section of the agenda is reserved for comments from the public on Consent Agenda items or items that are not otherwise included in this agenda.

3. APPROVAL OF AGENDA

4. BUSINESS

- 4.A [9158-17](#) Approval of Service Agreement AGR17-938 with Voith Hydro, Inc. for Field Services and Approval of Purchase of Mechanical Components from Voith Hydro, Inc, both for the Repair of the El Vado Hydroelectric Plant Shaft Seal

Presenters: James Alarid, Deputy Utilities Manager - Engineering

PG. 1 - 19

5. PUBLIC COMMENT

This section of the agenda is reserved for comments from the public on any items.

6. CLOSED SESSION

- 6.A** [9157-17](#) CLOSED SESSION - Pursuant to §10-15-1 (H)(8) of the New Mexico Open Meetings Act, NMSA 1978, the Board of Public Utilities will meet in closed session for the discussion of the purchase, acquisition or disposal of real property or water rights - Water Rights Discussion

Presenters: Board of Public Utilities

PG. 20

7. ADJOURNMENT

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the County Human Resources Division at 662-8040 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the personnel in the Department of Public Utilities (505) 662-8132 if a summary or other type of accessible format is needed.



County of Los Alamos

Staff Report

March 07, 2017

Los Alamos, NM 87544
www.losalamosnm.us

Agenda No.: 4.A
Index (Council Goals): BCC - N/A
Presenters: James Alarid, Deputy Utilities Manager - Engineering
Legislative File: 9158-17

Title

Approval of Service Agreement AGR17-938 with Voith Hydro, Inc. for Field Services and Approval of Purchase of Mechanical Components from Voith Hydro, Inc, both for the Repair of the El Vado Hydroelectric Plant Shaft Seal

Recommended Action

I move that the Board of Public Utilities Approve Service Agreement AGR17-938 with Voith Hydro, Inc. for Field Services in the amount of \$120,000.00, plus applicable gross receipts tax, in a form acceptable to the County Attorney. I further move that the Board of Public Utilities authorize the Utility Manager to approve Proposal MB2-437 from Voith Hydro, Inc. for purchase of Mechanical Components for Repair of the El Vado Hydroelectric Plant Shaft Seal in the amount of \$52,117.00, plus applicable gross receipts tax.

Staff Recommendation

Staff recommends that the Board approve as presented.

Body

In May 2016, during the final commissioning of the refurbished El Vado turbine and generator, the turbine shaft seal experienced excessive leakage. Commissioning was terminated as the leakage overwhelmed the unit's head cover pumps leading to the unit's shutdown due to head cover flooding. Since that time the contractor and the county have been in dispute as to which party is responsible for the repair of the shaft seal. Per the contractual dispute resolution process, the contractor has appealed to the County purchasing agent which resulted in the County purchasing agent concluding the responsibility for the repair is the contractors. The contractor appealed the purchasing agent's decision to the Los Alamos County Council. On November 9-10, 2016, hearings were held in front of the County Council to hear the contractor's appeal. The council concluded that the contract entered into between the contractor and Los Alamos County is a performance contract, and the County assessing liquidated damages or the County debarring the contractor were not appropriate at that time. The council direction was to have the parties attempt to resolve the dispute, considering their determination that the contract is a performance contract, and complete the contract.

The parties have been in settlement discussions since January 2017. A settlement has been tentatively reached pending review and approval of the party's legal representation.

The contractor proposed a repair that was a complete redesign of the manufacturer's original

seal design that had operated maintenance free for 27 years. The contractor's proposed solution also include a filtered water and air compressor system that would require regular maintenance. Furthermore, the proposed solution would eliminate the redundant capabilities of the two headcover pumps, resulting in reduce reliability of the manufacturer's design. The proposed solution would have been an inferior application from the manufacturer's design.

The technical expertise on the shaft seal during the project lies with the contractor's subcontractors. The County was never provided the opportunity to communicate directly with the technical experts and information received was vague. The County chose to consult with the manufacturer of the turbine, Voith Hydro, Inc., on a solution to repair the leaking seal. Voith Hydro, Inc. reaffirmed that the manufacturer's original seal design should not be changed. At the request of the County Voith has evaluated the seal and provided a recommendation to complete the seal replacement. Proposal MB2-437 is to manufacture and deliver to the El Vado site the necessary replacement mechanical components to make the seal repair.

The County also requested Voith provide field supervision to the refurbishment contractor and County during the seal repair, if a settlement is reached and the refurbishment contractor completes the work. In addition, the County requested Voith provide a proposal to complete the seal repair in its entirety should the County not be able to execute a settlement with the refurbishment contractor. AGR17-938 is a service agreement with Voith Hydro, Inc. that will allow the County to hire Voith Hyrdor, Inc. to provide the field supervision only during the seal repair, complete the seal repair in it's entirety and have an agreement in place should the County require additional services from Voith Hydro Inc.. The cost to provide field supervision, as the refurbishment contractor completes the repair, is estimated to cost \$16,000. The cost to complete the seal repair in its entirety is estimated to cost \$34,000.

Fiscal and Staff Impact

The cost of the seal repair will be between \$64,000 and \$87,000. This amount is below the remaining approved project contingency. The cost to assess the seal failure proposed by the refurbishment contractor was in excess of \$92,000. This amount did not include performing the repair.

Attachments

A - Proposal MB2-437 Voith Hydro, Inc.

B - AGR17-938 Voith Hydro, Inc.

VOITH HYDRO, INC.

P.O. Box 15022
York, PA 17405-7022

Proposal: MB2-437
Date: February 10, 2017

Proposal

TO Los Alamos County, Department of Public Utilities
ADDRESS 1000 Cental Avenue, Suite 130
ATTENTION Mr. James Alarid Tel: 505-663-3420 email: james.alarid@lacnm.us

VOITH HYDRO INC. (Company) agrees to sell to Purchaser agrees to purchase from Company the product(s) described below.

El Vado

Mr. Alarid:

If contracted to do so, and in full compliance with your request as well as standard Voith manufacturing and inspection practices, Voith shall provide the following:

Replacement parts for Shaft Seal Assembly Option 1 – See attached sketch, (option 1 is the upper sketch).

Item 1:

Furnish:

- One (1) Seal Ring Insert (in halves), made from laminated plastics.
- One (1) Sliding Ring made from heat treated martensitic steel
- Two (2) Studs
- Four (4) Nuts
- One (1) Key
- Eight (8) Lee springs LHC 156M 05S

The sliding ring and the seal ring insert will be changed according to the attached sketch. The seal will have a hydraulic pre-load. Eight (8) springs providing a total spring load of 2400 N. In addition, the sliding ring will increase in hardness. The ring will be manufactured from martensitic steel with heat treatment.

Total Price – Item 1:

FIFTY TWO THOUSAND ONE HUNDRED SEVENTEEN DOLLARS.....\$52,117.00

Item 2

Site supervision for seal installation and testing at Voith Hydro’s standard rates.

Total Price – Item 2:

TO BE DETERMINED.

Pricing: (hardware only).....\$52,117.00

Any supply, service, item or good, not specifically and expressly listed in the included scope of supply shall be considered as an additional supply, subject to our analysis and approval, and shall potentially influence schedule, delivery time price and other affected conditions.

Proposal

PRICE(S): See Previous Page

TAXES: None Included

Any applicable duties or sales, use, excise, value-added, or similar taxes will be added to the price and invoiced separately (unless acceptable exemption certificate is furnished).

PRICE POLICY CLAUSE:

Firm for acceptance within the validity of this proposal.

TERMS OF PAYMENT: Net 30 days

Unless otherwise stated, all payments shall be in United States dollars, and a pro rata payment shall become due as each shipment is made. If shipment is delayed by Purchaser, date of notice of readiness for shipment shall be deemed to be date of shipment for payment purposes.

On late payments, the contract price shall, without prejudice to Company's right to immediate payment, be increased by 1 1/2% per month on the unpaid balance, but not to exceed the maximum permitted by law.

If at any time in Company's judgment Purchaser may be or may become unable or unwilling to meet the terms specified, Company may require satisfactory assurances or full or partial payment as a condition to commencing or continuing manufacture or making shipment; and may, if shipment has been made, recover the product(s) from the carrier, pending receipt of such assurances.

SHIPPING DATE: **Approximately 12 weeks after receipt of order.** Shipment dates are contingent upon receipt of acceptable material within quoted delivery dates.

DELIVERY TERMS: INCOTERMS 2010 - DAP (Shipping included in price)

OTHER TERMS:

This offer will remain in effect for **30 days**, unless changed in the interim upon written notice from Company. Documents and related correspondence shall be sent to the VOITH HYDRO office at:

P.O. Box 15022, York, PA 17405-7022

This document and any other documents specially referred to as being a part hereof, constitute the entire contract on the subject matter, and it shall not be modified except in writing signed by both parties.

THIS CONTRACT INCLUDES THE GENERAL PROVISIONS ENCLOSED HEREIN.

TERMS AND CONDITIONS OF SALE

Article 1 -- Limited Warranty

1. Seller warrants title to the product(s) and also warrants the product(s) on date of shipment to Buyer to be of the kind and quality described herein, and free of defects in workmanship and material. Seller warrants its field services performed by it to be competent and that any recommendations of its Representative shall reflect his best judgment. Seller warrants its engineering services performed by it to be of the kind and quality described herein and in accordance with generally accepted standards and practices prevailing in the industry at the time performed. Seller warrants its installation and/or any other services performed by it, on date of performance, to be of the kind and quality described herein, in accordance with generally accepted standards and practices prevailing in the industry at the time performed, and free of defects in workmanship. **THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES**, including but not limited to implied warranties of merchantability and fitness of use, **AND CONSTITUTES THE ONLY WARRANTY OF SELLER WITH RESPECT TO THE PRODUCTS AND SERVICES.**

If within two years from date of delivery by Seller, but not more than one year from date of initial commercial operation of any item of product(s) or from date of performance of services by Seller, Buyer discovers that any item of the product or any service was not as warranted above and promptly notifies Seller in writing thereof, Seller shall remedy such nonconformance by, at Seller's option, adjustment or repair or replacement of the item and any affected part of the product(s) or by re-performance of the service, as the case may be, or by refund of a portion of the purchase price applicable to the nonconforming item or nonconforming service. Buyer shall assume all responsibility and expense for removal and reinstallation in connection with the foregoing remedies. The same obligations and conditions shall extend to replacement parts furnished by Seller hereunder. Seller shall have the right of disposal of parts replaced by it. **THIS STATES BUYER'S EXCLUSIVE REMEDY AGAINST SELLER AND ITS SUPPLIERS/SUBCONTRACTORS RELATING TO THE PRODUCT(S) AND SERVICES, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY**, and whether arising out of warranties, representations, instructions, installations or defects from any cause. Buyer shall assume responsibility for, and Seller may rely upon, the accuracy and completeness of information furnished by Buyer; Seller's product guarantees of power, efficiency and/or other similar output guarantees are contingent upon the input parameters provided by the Buyer. Seller and its suppliers/subcontractors shall have no obligation as to any product either which is not furnished by Seller or which has been improperly stored or handled or which has not been operated or maintained according to instructions in Seller or supplier furnished manuals.

Article 2 -- Limitation of Liability

NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, NEITHER SELLER NOR ITS SUPPLIERS/SUBCONTRACTORS SHALL BE LIABLE, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY, FOR LOSS OF USE, REVENUE OR PROFIT, OR FOR COST OF CAPITAL OR OF SUBSTITUTE USE OR PERFORMANCE, OR FOR INCIDENTAL, INDIRECT, OR SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF SIMILAR TYPE, OR FOR CLAIMS BY BUYER FOR DAMAGES OF BUYER'S CUSTOMERS.

Likewise, **SELLER SHALL NOT, UNDER ANY CIRCUMSTANCE, BE LIABLE FOR THE FAULT, NEGLIGENCE, OR WRONGFUL ACTS OR OMISSIONS OF BUYER OR BUYER'S EMPLOYEES**, or Buyer's other contractors or suppliers. **ANY INDEMNITY OR OBLIGATION TO DEFEND OR HOLD HARMLESS OF BUYER BY SELLER SHALL BE LIMITED TO ACTIONS AND/OR OMISSIONS OF SELLER THAT RESULT IN CLAIMS OF BODILY INJURY, WRONGFUL DEATH AND/OR PROPERTY DAMAGE AND FURTHERMORE SHALL RESPOND ONLY TO SUCH CLAIMS FROM THIRD PARTIES TO THIS CONTRACT.** Under no circumstance shall Seller be liable to or defend, indemnify and hold harmless Buyer for the sole negligence of Buyer. Neither the Seller nor its Field Service Representative shall be responsible for the acts, omissions or workmanship of employees, contractors,

VOITH HYDRO, INC.

subcontractors or agents of the Buyer or for their failure to follow the advice or instructions of the Seller's Field Service Representative, or for performing any work or giving any advice in respect of goods or services to the Buyer by Seller or others. **LIQUIDATED DAMAGES**, if any, for lateness or any product guarantee **SHALL BE THE BUYER'S EXCLUSIVE REMEDY AGAINST SELLER** and shall not exceed five (5%) percent of the contract price. Notwithstanding, the total liability of Seller to Buyer under all circumstances shall not exceed the contract price.

THIS LIMITATION OF LIABILITY ARTICLE SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISION CONTAINED IN ANY OF THE DOCUMENTS WHICH COMPRISE THIS CONTRACT.

Article 3 -- Patents

PATENTS - Seller shall pay costs and damages finally awarded in any suit against Buyer or its vendees to the extent based upon a finding that the design or construction of the product(s) as furnished infringes a United States' patent (except infringement occurring as a result of incorporating a design or modification at Buyer's request) provided that Buyer promptly notifies Seller of any claim of such infringement, and Seller is given the exclusive right at its expense to settle such claim and to defend or control the defense of any suit based upon such claim. THIS ARTICLE SETS FORTH SELLER'S EXCLUSIVE LIABILITY WITH RESPECT TO PATENT INFRINGEMENT.

Article 4 -- Delays

If Seller suffers delay in performance due to any cause beyond its control, including but not limited to acts of God, war, act or failure to act of government, act or omission of Buyer, fire, flood, strike or labor trouble, sabotage, acts of terrorism, or delay in obtaining from others suitable services, materials, components, equipment or transportation, the time of performance shall be extended for a period of time equal to the period of the delay and its consequences. Seller will give to Buyer notice in writing within a reasonable time after Seller becomes aware of any such delay. If the accumulated delay exceeds six months, Seller has the right, but not the obligation, to terminate the contract without cause. If terminated, Buyer shall assume responsibility for payment of costs, profit for work completed, and the commitment costs.

Article 5 -- Title, Risk of Loss and Insurance

Title to the product(s) and risk of loss or damage shall pass to Buyer at the point of shipment except that a security interest in the product(s) and proceeds and any replacement shall remain in Seller, regardless of mode of attachment to realty or other property, until the full price has been paid in cash. Buyer agrees to do all acts necessary to perfect and maintain said security interest, and to protect Seller's interest by adequately insuring the product(s) against loss or damage from any external cause with Seller named as insured or co-insured.

Article 6 -- Taxes and Currency

All prices specified are in US dollars unless otherwise stated. Sales and gross receipts taxes (including, without limitation goods and services tax, value added tax, sales and use taxes, all gross receipts taxes and retail sales tax) and all other taxes and duties other than those on income levied on Voith Hydro under applicable income tax laws are not included in the price as specified and are payable by Buyer.

Article 7 -- General

a. **BUYER DATA** - Timely performance by Seller is contingent upon Buyer's supplying to Seller, when needed, all required technical information, including drawing approval, and all required commercial documentation.

b. **NONCANCELLATION** - Buyer may not cancel or terminate for convenience, or direct suspension of manufacture, except on mutually acceptable terms.

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c. **STORAGE** - Any item of the product(s) on which manufacture or shipment is delayed by causes within Buyer's control, or by causes which affect Buyer's ability to receive the product(s), may be placed in storage by Seller for Buyer's account and risk.

d. **SHIPMENT** - The term "shipment" means delivery to the initial carrier in accordance with the delivery terms of this order. The shipping date is based upon conditions at the factory on the date hereof, and is subject to revisions to meet conditions on date of Buyer's acceptance. Seller may make partial shipments. Seller shall select method of transportation and route, unless terms are FCA INCOTERMS 2000, point of shipment and the Buyer specifies the method and route.

e. **SPECIAL SHIPPING DEVICES** - On shipments to a destination in the continental United States or Canada, Seller has the right to add to the invoice, as a separate item, the value of any special shipping device (oil barrel, reel, tarpaulin, cradle, crib and the like) used to contain or protect the product(s) invoiced, while in transit. Except as to oil barrels, full credit will be given on the return to Seller of the device in a reusable condition, CIP INCOTERMS 2000 destination. As to oil barrels, arrangement for return and credit must be made by Buyer with the refiner.

f. Compliance with OSHA or similar federal, state, provincial, or local laws during any operation or use of the product(s) is the sole responsibility of Buyer.

g. **INTEREST** - Buyer shall without notice pay interest at the rate of 1% per month (which is equivalent to 12.68% per annum, calculated annually) on any overdue payment and at the same rate on all other amounts required to be paid by Buyer hereunder which have been paid by Voith Hydro. Such interest is to be calculated and compounded monthly, not in advance and to accrue from the date from when such arrears were due and payable hereunder before and after maturity default and judgment until such arrears are paid in full. Payments of purchase price, and any other amounts due, are payable without set-off, abatement, deduction or counter-claim.

h. Assignment may be made only with written consent of both parties.

i. If at any time in Company's judgment Purchaser may be or may become unable or unwilling to meet the terms specified, Company may require satisfactory assurances or full or partial payment as a condition to commencing or continuing manufacture or making shipment; and may, if shipment has been made, recover the product(s) from the carrier, pending receipt of such assurances.

Article 8 -- Laws, Disputes and Venue

The laws of the Commonwealth of Pennsylvania shall govern the validity, interpretation and enforcement of any contract of which these provisions are a part. The parties hereby exclude the application of the United Nations Convention on the International Sale of Goods to this contract. Any dispute arising under this contract which cannot be resolved by the negotiation of the parties shall be finally resolved by arbitration under the Rules of the American Arbitration Association by a single arbitrator appointed in accordance with those Rules. The proceedings shall be conducted in English and the venue for the proceeding shall be situated in Philadelphia or some other mutually agreeable forum. Any determination or award shall be set forth in writing and shall be final and binding on the parties. The prices of this contract are based upon laws in effect on the date of the bid.

Article 9 -- Contract

This contract together with any amendments thereto which are accepted in writing by Voith Hydro constitute the entire agreement between Voith Hydro and Buyer pertaining to the purchase and installation of the product(s). No modification to this contract shall be binding upon a party hereto unless duly executed by a proper officer thereof in writing. No representation as to the product(s) or any other matter to Buyer shall in any way affect Buyer's obligation to pay the purchase price or perform its obligations under this contract.

VOITH HYDRO, INC.

Article 10 -- BUYER'S RESPONSIBILITY FOR HAZARDOUS MATERIALS

1. For the purposes of applicable Environmental Law, the Buyer shall be deemed to have charge, control and management of the place of the Work with respect to conditions existing as at the date of this Contract.
2. Prior to the Seller's commencing the Work, the Buyer shall:
 - (a) take all necessary steps to determine whether any Hazardous Materials are present at the place of the Work;
 - (b) provide the Seller with a written list of any Hazardous Materials;
 - (c) advise the Seller as to the location of the Hazardous Materials; and
 - (d) obtain and maintain any waste generator registration required for the disposal of any hazardous or industrial waste in accordance with all requirements of Environmental Law.
3. The Buyer shall take all necessary steps to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to, or the presence of, Hazardous Materials which were at the place of the Work prior to Seller's commencing the Work.
4. Except for asbestos, unless this Contract provides otherwise, the Buyer shall be responsible for taking all necessary steps, in accordance with all requirements of Environmental Law, to dispose of, store, neutralize or otherwise render harmless Hazardous Materials which were present at the place of the Work prior to the Seller's commencing the Work. Notwithstanding anything to the contrary, the Seller shall not have work of any kind on this contract involving asbestos and/or asbestos abatement.
5. If the Seller:
 - (a) encounters Hazardous Materials at the place of the Work; or
 - (b) has reasonable grounds to believe that Hazardous Materials are present at the place of the Work, which were not disclosed by the Buyer, as required under Section 3, or which were disclosed but have not been dealt with as required under Section 4, the Seller shall:
 - (c) take all reasonable steps, including stopping the Work, to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of the Hazardous Materials; and
 - (d) immediately report the circumstances to the Buyer in writing.
6. The Buyer shall, during the term of this Contract and for all materials that must be disposed of as a hazardous or industrial waste pursuant to Environmental Law, act as the "generator" for purposes of the disposal of any Hazardous Materials including, without limitation, signing all waste manifests required for the shipment of Hazardous Materials.
7. If the Seller is delayed in performing the Work or incurs additional costs as a result of taking steps required under Section 5, the time for completion of any of Seller's remaining obligations under this Contract shall be extended accordingly, and Seller shall be reimbursed for reasonable costs incurred as a result of the delay and as a result of taking those steps.
8. The Buyer shall indemnify and hold harmless the Seller and its agents, employees and subcontractors, from and against claims, demands, losses, costs (including, without limitation, legal expenses and the costs of any government or regulatory response), damages, actions, suits or proceedings arising of or resulting from exposure to, or to the presence of, Hazardous Materials which were at the place of the Work prior to the Seller's commencing the Work. This obligation shall not be

VOITH HYDRO, INC.

construed to negate, abridge or reduce any other rights or obligations of indemnity set out in this Contract or which otherwise exist respecting a person or party described in this Section.

9. In this Contract:

- (a) **"Environmental Law"** means all applicable statutes, regulations, ordinances, by-laws, codes, guidance documents and all international treaties and agreements now or in hereafter in existence in Pennsylvania (whether federal, state or municipal) relating to the protection and preservation of the environment, health and safety, product safety, product liability or Hazardous Materials, including, without limitation, the *Comprehensive Environmental Response, Compensation, and Liability Act*, US Code, Title 42, Chapter 103, and state environmental protection legislation, all as amended from time to time; and
- (b) **"Hazardous Materials"** means any substance, product, element, radiation or matter included in any definition of "hazardous product", "dangerous goods", "waste", "toxic substance", "contaminant", "pollutant", "deleterious substance" or words of similar import under Environmental Law, or the presence of which in the environment is likely to affect adversely the quality of the environment in any way and, without limiting the generality of the foregoing, includes asbestos, asbestos-containing materials, lead and PCBs.

10. Sections 1 to 9 and this Section 10 shall prevail notwithstanding any other provision of this Agreement.

Article 11 -- Intellectual Property

Seller retains all ownership of Intellectual Property on this contract. Seller provides a non-transferable non-exclusive license to Buyer to use, reproduce, or display the technical data on this contract. This license does not permit the Buyer to reverse engineer the technical data; nor to release, perform, display, disclose, or authorize the use of the technical data to others; nor to use the technical data to manufacture additional quantities of the items on this contract.



AGR17-938

INCORPORATED COUNTY OF LOS ALAMOS SERVICES AGREEMENT

This **SERVICES AGREEMENT** ("Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **VOITH HYDRO, INC. a Pennsylvania corporation**, ("Contractor") to be effective for all purposes April 1, 2017.

WHEREAS, the County's Department of Public Utilities ("DPU"), recently completed a refurbishment of the 8.0 MW Voith Kaplan turbine and National Industry generator ("Generator" or "Unit") which was originally commissioned in 1987 and located in El Vado, New Mexico; and

WHEREAS, in May 2016, during start-up of the refurbished Unit, the Generator's lower shaft seal experienced excessive leakage; and

WHEREAS, commissioning of the generator was then terminated as the leakage overwhelmed the Unit's head cover pumps leading to the Unit's shutdown tripping due to head cover flooding; and

WHEREAS, Contractor was the original designer of the Unit and has the knowledge, experience, and expertise to assist the County and its refurbishment contractor in completing the Unit's refurbishment and making the Generator operational; and

WHEREAS, Contractor will provide the Services, as described below, to County.

NOW, THEREFORE, for and in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

SECTION A. SERVICES: Contractor shall provide the following services:

1. **Onsite Technical Supervision and Assistance:** Contractor will provide the following on-site technical supervision and assistance as follows:
 - a. Contractor shall provide on-sight supervision and technical assistance at the County's El Vado Hydroelectric Dam Generating Facility ("Facility") during the generator shaft seal repair and replacement being performed by the County's refurbishment contractor.
 - b. Contractor agrees to provide adequately qualified onsite staff at the Facility for a minimum of three (3) days not including at least two (2) days of travel to Facility from Contractor's place of business pursuant to the rates as found in Section C below. County shall issue to Contractor, prior to Contractor incurring any cost or expense, written authorization to proceed.
 - c. Contractor's staff will provide Unit and Generator technical advice and assistance to County and DPU staff for work being performed on the Facility, including but not limited to Unit component (e.g., shaft seal) disassembly, installation of new shaft seal and related

parts including springs, studs, nuts, sliding ring, etc. (provided by Contractor under separate agreement), assisting and advising County, DPU, and refurbishment contractor on measure to bring any observed shaft seal leakage to original Contractor's original designed rate(s), and bringing the Unit to operational status.

- d. In accordance with Exhibit A, the County or its agents or contractors shall provide all personal protective equipment, tools, supplies, equipment, etc. necessary to complete the shaft seal repair. The Contractor's Field Service Representative shall provide specialty tools for measurement and/or quality assurance during this portion of the proposed scope of work
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2. **Optional Task Order Work:** The Contractor, agrees to provide, at the written request of the County, the following additional services:
 - a. In the event that the County is unable, via the work of the refurbishment contractor, to make the shaft seal meet Contractor's original operational parameters during the initial work in paragraph A.1. above, Contractor agrees to provide adequate and qualified on-sight staff, supervision, and millwrights to perform the shaft seal replacement in its entirety.
 - b. Contractor will provide, at minimum, staff for at least three consecutive days of onsite work and two days of travel pursuant to the rates as found in Section C below.
 - c. Contractor's work to be performed under this part includes provision of all necessary staff, equipment, and tools to install and make functional the shaft seal and related parts (as provided and manufactured by Contractor under separate agreement) to make the shaft seal functional by bringing the seal leakage within original manufacturer designed specifications and rates. County will make available all tools, instruments, cranes, etc. that is available onsite and at the Facility. Contractor and County shall coordinate appropriate resources prior to County giving written authorization to work. Contractor shall provide specialty tools, test equipment and devices that are specific to the specialized services provided by Contractor.
 - d. All work to be performed under this subsection, A.2., shall only begin only after receiving the County's written authorization to proceed and all work shall be in paid in accordance with the rates and fees set out in Exhibit A, attached hereto.
 3. Contractor shall provide any additional technical or building services support in accordance with Exhibit A related to shaft seal repair or if otherwise requested in writing by County. Any additional requested work or services hereunder shall require a written estimate of the additional work and written authorization to proceed by the County prior to Contract incurring additional

SECTION B. TERM: The term of this Agreement shall commence April 1, 2017 and shall continue through March 31, 2020, unless sooner terminated, as provided herein. The parties may, by mutual written amendment, extend the term for up to three one-year terms.

SECTION C. COMPENSATION:

- 1. Amount of Compensation.** County shall pay compensation for performance of the Services in an amount **NOT TO EXCEED ONE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (US \$120,000.00)**, including reimbursable expenses, but which amount does not include applicable New Mexico gross receipts taxes ("NMGRT"). Compensation for work performed and for reimbursable shall be paid in accordance with the rate schedule set out in Exhibit "A," attached hereto and made a part hereof for all purposes.
- 2. Monthly Invoices.** Contractor shall submit itemized invoices to County's Project Manager showing amount of compensation due, amount of any NMGRT, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice. All disputes related to performance and payment shall be governed by the County's Procurement Code, Chapter 31.

SECTION D. TAXES: Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGRT levied on the amounts payable under this Agreement.

SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL: This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and will not be considered an employee of County for any purpose. Contractor, its agents or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

SECTION F. STANDARD OF PERFORMANCE: Contractor agrees and represents that it has and will maintain the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

SECTION G. DELIVERABLES AND USE OF DOCUMENTS: All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of the County.

SECTION H. INTELLECTUAL PROPERTY: Contractor retains all ownership of Intellectual Property on this contract. Contractor provides a non-transferable non-exclusive license to County to use, reproduce, or display the technical data on this contract. This license does not permit the County to reverse engineer the technical data; nor to release, perform, display, disclose, or authorize the use of the technical data to others; nor to use the technical data to manufacture additional quantities of the items on this contract.

SECTION I. EMPLOYEES AND SUB-CONTRACTORS: Contractor shall be solely responsible for payment of wages, salary or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

SECTION J. INSURANCE: Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.

SECTION K. RECORDS: Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

SECTION L. APPLICABLE LAW: Contractor shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement. In any lawsuit or legal dispute arising from the operation of this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

SECTION M. NON-DISCRIMINATION: During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the

performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.

SECTION N. INDEMNITY: Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys' fees, of any kind or nature, arising from Contractor's performance hereunder or breach hereof and the performance of Contractor's employees, agents, representatives and subcontractors.

SECTION O. FORCE MAJEURE: Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

SECTION P. NON-ASSIGNMENT: Contractor may not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

SECTION Q. LICENSES: Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

SECTION R. PROHIBITED INTERESTS: Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further agrees that it will not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

SECTION S. TERMINATION:

1. **Generally.** County may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared pursuant to this Agreement.
2. **Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by the County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

SECTION T. NOTICE: Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

James Alarid, PE
Incorporated County of Los Alamos
1000 Central Avenue, Suite 130
Los Alamos, New Mexico 87544

Contractor:

David Sandquist
Voith Hydro, Inc.
16789 West 69th Circle
Arvada, Colorado 80007

SECTION U. INVALIDITY OF PRIOR AGREEMENTS: This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both County and Contractor.

SECTION V. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form was submitted as part of the Contractor's Response and is incorporated herein by reference for all purposes. This Section acknowledges compliance with Chapter 81 of the Laws of 2006 of the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

NAOMI D. MAESTAS
COUNTY CLERK

BY: _____
TIMOTHY A. GLASCO, P.E. **DATE**
UTILITIES MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

VOITH HYDRO, INC.

BY: _____
DATE

Exhibit "A"
AGR17-938
RATE SCHEDULE



Voith Hydro Inc., 760 East Berlin Road, York, PA 17408-8701

Voith Hydro Inc.
P. O. Box 15022
York, PA 17405-7022
Tel. 717-792-7000
Fax 717-792-7263
www.york.voithhydro.com

A Voith and Siemens Company

HOURLY BILLING RATES FOR SERVICE PERSONNEL

Effective January 1, 2016

Classification of Service Personnel:	For Work Performed: 1/1/2016 through 12/31/2016	For Work Performed: 1/1/2017 through 12/31/2017	For Work Performed: 1/1/2018 through 12/31/2018
Group I - Field Service Representative: Project Type Job, Turbine, Generator, Governor or Balance of Plant	US\$ 238 / hr	US\$ 245 / hr	US\$ 250 / hr
Group II - Engineer: Hydraulic, Mechanical, Electrical, Welding or Field (Commissioning, Testing, Diagnostic Services) and Project Management	US\$ 286 / hr	US\$ 294 / hr	US\$ 300 / hr
Group III - Working Foreman	US\$ 175 / hr	US\$ 180 / hr	US\$ 185 / hr
Group IV - Skilled Craftsmen Mechanics, Welders, Winders, Electricians, etc.	US\$ 155 / hr	US\$ 160 / hr	US\$ 165 / hr

EXPENSES:

A.	Transportation to and from job site	Cost + 20%
B.	Transportation at site	IRS Business Standard Mileage rate in effect + 20%
C.	Minimum Daily Living Expense	US\$ 145.00 / day

NOTES:

Above mentioned rates are for Straight Time as defined in the attached terms.

For Emergency Mobilization (7 days or less from contract award), the above rates will be increased by 50%.



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HOURLY BILLING RATES FOR SERVICE PERSONNEL

Effective January 1, 2016

A. FIELD OPERATIONS REPRESENTATIVE

If the services of two or more Field Operations Representatives are to be furnished, the term "Representative" or any corresponding pronoun used herein shall be deemed to refer to each such Field Representative.

B. SCOPE OF REPRESENTATIVE'S SERVICES

1. Unless indicated otherwise, the representatives shall act only in an advisory capacity. He will interpret the Seller's drawings, advise the Buyer regarding the sequence of steps in erection, installation, inspection, start-up, dismantling, or repairs, as the case may be, and explain features and components of the Seller's products and their functions. If the Representative will act in another capacity, he will do so in accordance with normal standards of the industry for that type of work.
2. The Representative shall not be required to superintend or supervise personnel supplied by the Buyer or train them in their respective crafts in connection with the performance of their work.
3. Neither the Seller nor the Representative shall be responsible for any acts, omissions or workmanship of employees, contractors, subcontractors, or agents of the Buyer or for their failure to follow the advice or instructions of the Representative, or for performing any work or giving any advice in respect to equipment manufactured or services sold to the Buyer by others.
4. The Seller's Field Operation Representatives are not authorized or licensed to operate equipment and all such responsibility is the Buyer's.
5. The Seller's Field Operation Representatives shall comply with the Buyer's rules for visitors pertaining to safety, plant protection and the operation and parking of vehicles.

C. BUYER'S RESPONSIBILITIES

1. Labor, Material, Tools and Equipment - Unless otherwise specified the Buyer shall furnish at his own expense and responsibility all cranes, rigging, tools facilities and equipment, material and repair or replacement parts, together with sufficient skilled and common labor and foremen, supervisors and interpreters for the efficient performance of the work, and all fuel, lubricating oil, water, electric power, and other supplies and utilities that may be required in connection with the work.
2. Buyer's Representative - The Buyer shall designate a person in his organization fluent in the English language to represent him fully at the site in all contacts and dealings with the Representatives. The Buyer's representative shall be responsible for coordinating the work, and shall be in charge of the labor, material, supplies, tools, and facilities to be furnished by the Buyer. The Buyer's representative shall inspect and shall accept all details of the work as they are completed. Except in instances where the Seller has such right under the terms of the warranty covering the product involved, decisions with respect to repair or replacement of the Buyer's equipment or parts thereof shall remain solely with the Buyer.
3. Safety - The Buyer shall furnish the Representative a safe and healthful place to work, including first aid, washup, and toilet facilities at the site. If, in the opinion of the Seller, the Buyer fails to comply with the foregoing, or if in the Seller's opinion, the employee's health or safety is or would be jeopardized during the period of the assignment, the Seller may order its personnel to return to their headquarters at the Buyer's expense and the Seller shall not be obligated to have him or his replacement return to the work site until given satisfactory assurance of compliance by the Buyer of its obligations. All costs and expenses for the return to the job for the Representative or his replacement shall be for the account of the Buyer.

D. CHARGES

Invoices from the Seller for the time and expense of each Field Operations Representative and for tool rental and purchased material and services will be based on the conditions set forth below:

1. General
 - a. If the price for performing field service is fixed, such price shall apply only to the work called for at the inception of this contract, and shall be performed on a straight time basis only unless otherwise agreed in writing. If the Buyer requests changes in the scope of the work or an increase in the schedule of hours to be worked, additional charges shall be made pursuant to Paragraphs D1b through D6.
 - b. If the Contract is not on a fixed price basis, the Buyer shall pay the Seller for the straight time, overtime, standby and travel time as defined herein. Rates shall be those in effect at the time the work is performed and normally applicable to this type of work.
2. Definitions of Time
 - a. Straight Time - Straight time is defined as time worked on a regular schedule of 8 hours between 7:00 a.m. and 6:00 p.m., Monday through Friday, or for time worked on any other agreed upon schedule of 8 hours per day, Monday through Friday. Each hour of straight time shall be paid for at the straight time rate.



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- c. Seller and Personal Tools - Tools and equipment furnished by the Seller or the Representative shall remain the property of the Seller or the Representative at all times. All such tools and equipment shall be for the exclusive use of the Representative. If such tools and equipment are not returned to the Seller, the Buyer shall reimburse the Seller for their full replacement value.
- d. Purchased Tools and Equipment - If under the terms of the Contract the Seller is to provide tools, test instruments, vehicles or household equipment they will be procured and shipped by the Seller. Unless otherwise agreed and specified, the purchase price, packing and shipping expense, insurance, import licenses and duties, taxes and other expenses involved and pertaining to this equipment plus 15% handling charge will be for the account of the Buyer. Title, liability and maintenance responsibility passes to the Buyer upon delivery but right of exclusive use by the Representative is reserved by the Seller until the work is completed.
- e. Storage Facilities - The Buyer shall provide suitable locked storage facilities for the exclusive use of the Representative for the storage of personal or Seller property such as drawings, tools, instruments and other special equipment.

E. INVOICING AND PAYMENT

1. Invoicing - The Seller will submit monthly invoices on a net cash basis covering the time and expenses of the Representative, and a final invoice upon completion of his work. Separate or combination invoices for purchased material, repair parts, labor, engineering, services, tool rental, and other items furnished by the Seller will be issued on the same basis.
2. Payment - All payments shall be made by the Buyer in U.S. Dollars upon receipt of invoice. Invoices shall be paid within 30 days from the date of issuance.
3. Verification of Time and Expense - The Representative, if requested by the Buyer, will present a copy of his regular time and expense reports. The Buyer, when requested, shall indicate his approval of such reports by signing the same.

F. ENGINEERING INFORMATION

While the Seller will provide advisory assistance to its Field Operations Representative relating to routine engineering problems encountered in connection with the performance of this field service assignment, the Seller reserves the right to charge the Buyer at its regular rates for engineering services such as layout, design, drawings, engineering analysis, engineering reports and visits to the job site or elsewhere by Seller engineering personnel. However, no such engineering services will be undertaken without the authorization of the Buyer.

G. SERVICE PARTS AND FACTORY REPAIRS

During the performance of the service assignment the Seller may at the request of the Buyer furnish service parts or materials or perform repair work on the equipment or its components at a Seller manufacturing or repair facility. In such cases the Seller will separately invoice the Buyer at its current regular prices and under the Seller's current terms and conditions applicable to such parts, material or repair work.

H. LABOR PERMITS, TAXES, CERTIFICATIONS

The Buyer shall, at his own expense, secure any work permit, labor permit, tax exemption certificate, or any other authorization which may be required to permit the Representative to perform the requested services. If special certification, pre-qualification or other examinations are obtained at the Buyer's request, the cost incurred shall also be for the Buyer's account. Any loss of the Representative's services pending the procurement of any such permit, authorization, certification or examination shall be for the Buyer's account and shall be paid for by the Buyer as stand-by time as defined and specified herein.

I. MODIFICATIONS

It is recognized that the nature of field service is such that changes in the scope of it as originally contemplated often occur. The Seller will undertake additional services within the normal scope of field service but reserves the right to require the Buyer to confirm in writing any extension of the services originally ordered. The Seller shall be entitled, however, to rely upon oral orders, including instructions of the Buyer's representative at the site. Any additional services performed by the Seller pursuant to such written or oral orders or instructions shall be paid for on the basis set forth herein or as otherwise agreed to in writing between the parties.



County of Los Alamos

Staff Report

March 07, 2017

Los Alamos, NM 87544
www.losalamosnm.us

Agenda No.: 6.A
Index (Council Goals): BCC - N/A
Presenters: Board of Public Utilities
Legislative File: 9157-17

Title

CLOSED SESSION - Pursuant to §10-15-1 (H)(8) of the New Mexico Open Meetings Act, NMSA 1978, the Board of Public Utilities will meet in closed session for the discussion of the purchase, acquisition or disposal of real property or water rights - Water Rights Discussion

Recommended Action

I move that the Board of Public Utilities convene in closed session as authorized by §10-15-1 (H)(8) of the New Mexico Open Meetings Act, NMSA 1978, to discuss water rights.