

Appendix 1016

WATER: ARIZONA

**CONTRACT OF FEBRUARY 9, 1944 (EFFECTIVE
FEBRUARY 24, 1944)**

(Act of February 24, 1944; Ch. 4, Seventeenth Legislature; Session
Laws of Arizona, 1944, pp. 419-427)

CHAPTER 4

(House Bill No. 2)

*An Act ratifying the contract between the United States and the State of
Arizona for storage and delivery of water from Lake Mead, and declar-
ing an emergency*

Be it enacted by the Legislature of the State of Arizona:

SECTION 1. RATIFICATION. There is hereby unconditionally rati-
fied, approved, and confirmed, that certain contract for the storage
and delivery of water from Lake Mead executed on behalf of the
United States by the Honorable Harold L. Ickes, secretary of the
Interior, and on behalf of the State of Arizona by its Colorado river
commission, bearing date the 9th day of February 1944, as follows:

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**BOULDER CANYON PROJECT
ARIZONA-CALIFORNIA-NEVADA**

CONTRACT FOR DELIVERY OF WATER

THIS CONTRACT made this 9th day of February 1944 pursuant to
the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts
amendatory thereof or supplemental thereto, all of which acts are
commonly known and referred to as the Reclamation Law, and par-
ticularly pursuant to the Act of Congress approved December 21,
1928 (45 Stat. 1057), designated the Boulder Canyon Project Act,
and acts amendatory thereof or supplementary thereto, between THE
UNITED STATES OF AMERICA, hereinafter referred to as "United
States," acting for this purpose by Harold L. Ickes, Secretary of the
Interior, hereinafter referred to as the "Secretary," and the STATE OF
ARIZONA, hereinafter referred to as "Arizona," acting for this purpose

A559

by the Colorado River Commission of Arizona, pursuant to Chapter 46 of the 1939 Session Laws of Arizona,
Witnesseth that:

EXPLANATORY RECITALS

2. Whereas for the purpose of controlling floods, improving navigation, regulating the flow of the Colorado River, providing for storage and for the delivery of stored waters for the reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary acting under and in pursuance of the provisions of the Colorado River Compact and Boulder Canyon Project Act, and acts amendatory thereof or supplementary thereto, has constructed and is now operating and maintaining in the main stream of the Colorado River at Black Canyon that certain structure known as and designated Boulder Dam and incidental works, creating thereby a reservoir designated Lake Mead of a capacity of about thirty-two million (32,000,000) acre-feet; and

3. Whereas said Boulder Canyon Project Act provides that the Secretary, under such general rules and regulations as he may prescribe, may contract for the storage of water in the reservoir created by Boulder Dam, and for the delivery of such water at such points on the river as may be agreed upon, for irrigation and domestic uses, and provides further that no person shall have or be entitled to have the use for any purpose of the water stored, as aforesaid, except by contract made as stated in said Act; and

4. Whereas it is the desire of the parties to this contract to contract for the storage of water and the delivery thereof for irrigation of lands and domestic uses within Arizona; and

5. Whereas nothing in this contract shall be construed as affecting the obligations of the United States to Indian tribes:

6. Now, therefore, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

DELIVERY OF WATER

7. (a) Subject to the availability thereof for use in Arizona under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States shall deliver and Arizona, or agencies or water users therein, will accept under this contract each calendar year from storage in Lake Mead, at a point or points of diversion on the Colorado River approved by the Secretary, so much water as may be necessary for the beneficial consumptive use for irrigation and domestic uses in Arizona of a maximum of 2,800,000 acre-feet.

(b) The United States also shall deliver from storage in Lake Mead for use in Arizona, at a point or points of diversion on the Colorado River approved by the Secretary, for the uses set forth in subdivision (a) of this Article, one-half of any excess or surplus waters unapportioned by the Colorado River Compact to the extent such water is available for use in Arizona under said compact and said act, less such excess or surplus water unapportioned by said compact as may be used in Nevada, New Mexico, and Utah in accordance with the rights of said states as stated in subdivisions (f) and (g) of this Article.

(c) This contract is subject to the condition that Boulder Dam and Lake Mead shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of perfected rights in pursuance of Article VIII of the Colorado River Compact; and third, for power. This contract is made upon the express condition and with the express covenant that the United States and Arizona, and agencies and water users therein, shall observe and be subject to and controlled by said Colorado River Compact and the Boulder Canyon Project Act in the construction, management, and operation of Boulder Dam, Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water for the generation of power, irrigation, and other uses.

(d) The obligation to deliver water at or below Boulder Dam shall be diminished to the extent that consumptive uses now or hereafter existing in Arizona above Lake Mead diminish the flow into Lake Mead, and such obligation shall be subject to such reduction on account of evaporation, reservoir and river losses, as may be required to render this contract in conformity with said compact and said act.

(e) This contract is for permanent service, subject to the conditions stated in subdivision (c) of this Article, but as to the one-half of the waters of the Colorado River system unapportioned by paragraphs (a), (b), and (c) of Article III of the Colorado River Compact, such water is subject to further equitable apportionment at any time after October 1, 1963, as provided in Article III (f) and Article III (g) of the Colorado River Compact.

(f) Arizona recognizes the right of the United States and the State of Nevada to contract for the delivery from storage in Lake Mead for annual beneficial consumptive use within Nevada for agricultural and domestic uses of 300,000 acre-feet of the water apportioned to the Lower Basin by the Colorado River Compact, and in addition thereto to make contract for like use of $\frac{1}{2}$, (one twenty-fifth) of any excess or surplus waters available in the Lower Basin and unapportioned by the Colorado River Compact, which waters are subject to further equitable apportionment after October 1, 1963, as provided in Article III (f) and Article III (g) of the Colorado River Compact.

(g) Arizona recognizes the rights of New Mexico and Utah to equitable shares of the water apportioned by the Colorado River Compact to the Lower Basin and also water unapportioned by such compact, and nothing contained in this contract shall prejudice such rights.

(h) Arizona recognizes the right of the United States and agencies of the State of California to contract for storage and delivery of water from Lake Mead for beneficial consumptive use in California, provided that the aggregate of all such deliveries and uses in California from the Colorado River shall not exceed the limitation of such uses in that State required by the provisions of the Boulder Canyon Project Act and agreed to by the State of California by an act of its Legislature (Chapter 16, Statutes of California of 1929) upon which limitation the State of Arizona expressly relies.

(i) Nothing in this contract shall preclude the parties hereto from contracting for storage and delivery above Lake Mead of water herein contracted for, when and if authorized by law.

(j) As far as reasonable diligence will permit, the water provided for in this contract shall be delivered as ordered and as reasonably

required for domestic and irrigation uses within Arizona. The United States reserves the right to discontinue or temporarily reduce the amount of water to be delivered, for the purpose of investigation and inspection, maintenance, repairs, replacements, or installation of equipment or machinery at Boulder Dam, or other dams heretofore or hereafter to be constructed, but so far as feasible will give reasonable notice in advance of such temporary discontinuance or reduction.

(k) The United States, its officers, agents, and employees shall not be liable for damages when for any reason whatsoever suspensions or reductions in the delivery of water occur.

(l) Deliveries of water hereunder shall be made for use within Arizona to such individuals, irrigation districts, corporations or political subdivisions therein of Arizona as may contract therefor with the Secretary, and as may qualify under the Reclamation Law or other federal statutes or to lands of the United States within Arizona. All consumptive uses of water by users in Arizona, of water diverted from Lake Mead or from the main stream of the Colorado River below Boulder Dam, whether made under this contract or not, shall be deemed, when made, a discharge pro tanto of the obligation of this contract. Present perfected rights to the beneficial use of waters of the Colorado River system are unimpaired by this contract.

(m) Rights-of-way across public lands necessary or convenient for canals to facilitate the full utilization in Arizona of the water herein agreed to be delivered will be granted by the Secretary subject to applicable federal statutes.

POINTS OF DIVERSION: MEASUREMENTS OF WATER

8. The water to be delivered under this contract shall be measured at the points of diversion, or elsewhere as the Secretary may designate (with suitable adjustment for losses between said points of diversion and measurement), by measuring and controlling devices or automatic gauges approved by the Secretary, which devices, however, shall be furnished, installed, and maintained by Arizona, or the users of water therein, in manner satisfactory to the Secretary; said measuring and controlling devices or automatic gauges shall be subject to the inspection of the United States, whose authorized representatives may at all times have access to them, and any deficiencies found shall be promptly corrected by the users thereof. The United States shall be under obligation to deliver water only at diversion points where measuring and controlling devices or automatic gauges are maintained, in accordance with this contract, but in the event diversions are made at points where such devices are not maintained, the Secretary shall estimate the quantity of such diversions and his determination thereof shall be final.

CHARGES FOR STORAGE AND DELIVERY OF WATER

9. No charge shall be made for the storage or delivery of water at diversion points as herein provided necessary to supply present perfected rights in Arizona. A charge of 50¢ per acre-foot shall be made for all water actually diverted directly from Lake Mead during the Boulder Dam cost repayment period, which said charge shall be paid by the users of such water, subject to reduction by the Secretary in

the amount of the charge if it is concluded by him at any time during said cost-repayment period that such charge is too high. After expiration of the cost-repayment period, charges shall be on such basis as may hereafter be prescribed by Congress. Charges for the storage or delivery of water diverted at a point or points below Boulder Dam, for users, other than those specified above, shall be as agreed upon between the Secretary and such users at the time of execution of contracts therefor, and shall be paid by such users; provided such charges shall, in no event, exceed 25¢ per acre-foot.

RESERVATIONS

10. Neither Article 7, nor any other provision of this contract, shall impair the right of Arizona and other states and the users of water therein to maintain, prosecute or defend any action respecting, and is without prejudice to, any of the respective contentions of said states and water users as to (1) the intent, effect, meaning, and interpretation of said compact and said act; (2) what part, if any, of the water used or contracted for by any of them falls within Article III (a) of the Colorado River Compact; (3) what part, if any, is within Article III (b) thereof; (4) what part, if any, is excess or surplus waters unapportioned by said Compact; and (5) what limitations on use, rights of use, and relative priorities exist as to the waters of the Colorado River system; provided, however, that by these reservations there is no intent to disturb the apportionment made by Article III (a) of the Colorado River Compact between the Upper Basin and the Lower Basin.

DISPUTES AND DISAGREEMENTS

11. Whenever a controversy arises out of this contract, and if the parties hereto then agree to submit the matter to arbitration, Arizona shall name one arbitrator and the Secretary shall name one arbitrator and the two arbitrators thus chosen shall meet within ten days after their selection and shall elect one other arbitrator within fifteen days after their first meeting, but in the event of their failure to name the third arbitrator within thirty days after their first meeting, such arbitrator not so selected shall be named by the Senior Judge of the United States Circuit Court of Appeals for the Tenth Circuit. The decision of any two of the three arbitrators thus chosen shall be a valid and binding award.

RULES AND REGULATIONS

12. The Secretary may prescribe and enforce rules and regulations governing the delivery and diversion of waters hereunder, but such rules and regulations shall be promulgated, modified, revised or extended from time to time only after notice to the State of Arizona and opportunity is given to it to be heard. Arizona agrees for itself, its agencies and water users that in the operation and maintenance of the works for diversion and use of the water to be delivered hereunder, all such rules and regulations will be fully adhered to.

AGREEMENT SUBJECT TO COLORADO RIVER COMPACT

13. This contract is made upon the express condition and with the express covenant that all rights of Arizona, its agencies and water users, to waters of the Colorado River and its tributaries, and the use of the same, shall be subject to and controlled by the Colorado River Compact signed at Santa Fe, New Mexico, November 24, 1922, pursuant to the Act of Congress approved August 19, 1921 (42 Stat. 171), as approved by the Boulder Canyon Project Act.

EFFECTIVE DATE OF CONTRACT

14. This contract shall be of no effect unless it is unconditionally ratified by an Act of the Legislature of Arizona, within three years from the date hereof, and further, unless within three years from the date hereof the Colorado River Compact is unconditionally ratified by Arizona. When both ratifications are effective, this contract shall be effective.

INTEREST IN CONTRACT NOT TRANSFERABLE

15. No interest in or under this contract, except as provided by Article 7 (1), shall be transferable by either party without the written consent of the other.

APPROPRIATION CLAUSE

16. The performance of this contract by the United States is contingent upon Congress making the necessary appropriations for expenditures for the completion and the operation and maintenance of any dams, power plants or other works necessary to the carrying out of this contract, or upon the necessary allotments being made therefor by any authorized federal agency. No liability shall accrue against the United States, its officers, agents, or employees by reason of the failure of Congress to make any such appropriations or of any federal agency to make such allotments.

MEMBER-OF-CONGRESS CLAUSE

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

DEFINITIONS

18. Wherever terms used herein are defined in Article II of the Colorado River Compact or in Section 12 of the Boulder Canyon Project Act, such definitions shall apply in construing this contract.

19. In witness whereof the parties hereto have caused this contract to be executed the day and year first above written.

By (s) THE UNITED STATES OF AMERICA,
HAROLD L. ICKES,
Secretary of the Interior.

STATE OF ARIZONA, acting by and
through its COLORADO RIVER
COMMISSION,

By (s) HENRY S. WRIGHT, *Chairman.*
By (s) NELLIE T. BUSH, *Secretary.*

Approved this 11th day of February 1944:¹

(s) SIDNEY P. OSBORN,
Governor of the State of Arizona.

SEC. 2. EMERGENCY. To preserve the public peace, health and safety it is necessary that this Act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor: February 24, 1944.

Filed in the Office of the Secretary of State: February 24, 1944.

¹ On copies of this contract furnished by the Department of the Interior, this date appears "7th day of February 1944."