Appendix 905

POWER CONTRACTS:

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, MAY 29, 1941

(Exhibits 1 and 2 omitted)

Symbol Ilr-1336

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

ARIZONA-CALIFORNIA-NEVADA

THE UNITED STATES OF AMERICA AND THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

CONTRACT FOR THE SALE OF ELECTRICAL ENERGY

1. THIS CONTRACT, made this 29th day of May 1941, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act (hereinafter referred to as the "Project Act"), and to the Act of Congress approved July 19, 1940 (54 Stat. 774), designated the Boulder Canyon Project Adjustment Act (hereinafter referred to as the "Adjustment Act"), between THE UNITED STATES OF AMERICA (hereinafter referred to as the "United States"), acting for this purpose by Harold L. Ickes, Secretary of the Interior (hereinafter referred to as the "Secretary"), and THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a public corporation organized and existing under the laws of the State of California (hereinafter referred to as the "District");

Witnesseth that—

EXPLANATORY RECITALS

2. Whereas, pursuant to the provisions of the Project Act, the United States entered into a certain contract designated as "Contract

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for Lease of Power Privilege," dated April 26, 1930, with severally, The City of Los Angeles and its Department of Water and Power (hereinafter collectively referred to as the "City") and Southern California Edison Company, Ltd. (hereinafter referred to as "Edison Company") which contract was thereafter amended by two certain contracts between the same parties, dated May 28, 1930, and September 23, 1931, and was also modified by a certain contract between the United States and the City, dated July 6, 1938, and consented to by Edison Company, which Contract for Lease of Power Privilege, dated April 26, 1930, together with said amendatory and modifying contracts, are hereinafter collectively referred to as the "Lease"; and

3. Whereas, under date of April 26, 1930, the parties hereto entered into a certain contract for electrical energy, which contract was amended under date of May 31, 1930, and was also modified by a certain contract between the parties hereto, dated July 13, 1938, such contract as so amended and modified being hereinafter collectively referred to as the "Original Contract"; and

4. Whereas by the terms of the Adjustment Act it is provided, among other things, that the Secretary is authorized to negotiate for and enter into a contract for the termination of the existing Lease of the Boulder Power Plant, and that the Secretary, in consideration of such termination of the Lease, is authorized to designate the City and Edison Company as the agents of the United States for the operation of Boulder Power Plant; and

5. Whereas, under date of May 29, 1941, the United States and the City and Edison Company (hereinafter collectively referred to as "Operating Agents") have executed a contract designated "Contract for the Operation of Boulder Power Plant," a copy of which said contract is attached hereto, marked "Exhibit 1"; and

6. Whereas, under date of May 20, 1941, the Secretary approved and promulgated "General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act," a copy of which is attached hereto, marked "Exhibit 2";

7. Now, therefore, in consideration of the provisions, covenants, and conditions herein contained, the parties hereto agree as follows, to wit:

REGULATIONS AND AGENCY CONTRACT

8. (a) This contract is subject to all the terms and provisions of Exhibit 2 hereof which is hereby made a part hereof as fully and completely as though set out herein at length, and this contract is subject to such other rules and regulations as hereafter may be promulgated by the Secretary pursuant to law and to Article 27 of Exhibit 2 hereof.

(b) The District hereby consents that the United States shall, and the United States agrees that it shall, cause the energy agreed to be delivered hereunder to be generated and delivered in accordance with the provisions of Exhibit 1; and the parties hereto agree that the rights and obligations of the District under this contract shall be controlled by the provisions of Exhibit 1 to the extent that such provisions are applicable to the District as an allottee or contractor for electrical energy; provided, however, that in the event that such Exhibit 1 shall be terminated as to either or both of the Operating Agents therein named, the United States thereafter shall itself generate and deliver the energy agreed by the United States to be generated and delivered through the agent or agents as to which said Exhibit 1 shall have been terminated.

DELIVERY OF ENERGY

9. (a) The United States agrees to deliver at transmission voltage at Boulder Power Plant, and the District agrees to take and/or pay for, electrical energy in accordance with the provisions of Article 8 hereof, for the period from the effective date of this contract to May 31, 1987, inclusive, in accordance with the allocation of energy contained in Exhibit 2; provided, that the United States shall have the right to interchange energy from its hydroelectric plants on the Colorado River below Boulder Dam with energy allocated to the District and generated at Boulder Power Plant, and to deliver energy at the point of connection of such other hydroelectric plants to the District's transmission line in lieu of delivering energy at Boulder Power Plant, insofar as such interchange can be effected without interfering with service to, or increasing the charges against, the District and without impairing or extending the rights or obligations, respectively, of other allottees. The District agrees that the United States may so interchange energy insofar as practicable, as a means of effecting integration of operations as between Boulder Power Plant and other projects on the Colorado River owned and operated by the United States at which power is or may be developed, as the primary step in any program of integration of operations agreed upon, decided, or determined pursuant to Article 20 (b) of Exhibit 1. For the purpose of effectuating such interchange, the United States shall have the right to connect, without cost to the District, such other hydroelectric plants with the transmission system of the District, and the right to use, without cost to the United States, any power-transmission capacity of said transmission system which for the time being may be in excess of the District's requirements; provided, that the use of such excess capacity at all times shall be subject to reasonable operating conditions fixed by the District. The District shall have the opportunity to present its views to the Secretary or his representative on the electrical characteristics of the generating and transforming equipment to be used to supply energy from power plants other than Boulder Power Plant under this Article 9 (a) before proposals for the furnishing of the same are invited. The design and

specifications of any connections with the District's transmission system shall conform to specifications approved by the General Manager and Chief Engineer of the District.

(b) Section G–2 and T–2, described in Exhibit 2, shall be used solely for the service of the District, subject to Article 15 of Exhibit 1 and Article 20 of Exhibit 2. If, after giving the District an opportunity to present its views, the Secretary shall find it to be necessary or economically advantageous to provide service to resale consumers of energy allocated to but unused by the District, by means of equipment herein designated for service to the District, or any additions thereto necessary for such service to the District and to such resale consumers, the District hereby consents to such use of said equipment, and to such additions thereto. The District further agrees to pay the generating charges in the manner prescribed by Exhibit 2, attributable to equipment so used for the service of such resale consumers, less payments therefor made to the United States by such resale consumers.

DELIVERY OF WATER FOR GENERATION OF ELECTRICAL ENERGY

10. (a) Subject to—

(i) the statutory requirement that Boulder Dam and the reservoir created thereby shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of perfected rights mentioned in Section 6 of the Project Act; and third, for power; and

(ii) the further statutory requirement that this contract is made upon the express condition and with the express covenant that the rights of the District, as a contractor for electrical energy, to the use of the waters of the Colorado River, or its tributaries, shall be subject to and controlled by the Colorado River Compact;

the United States will deliver to the District energy in the manner required by this contract, in the quantity to which the District is entitled hereunder, and in accordance with the District's load requirements.

(b) The United States reserves the right temporarily to discontinue or reduce the delivery of water for the generation of electrical energy at any time for the purpose of maintenance, repairs and/or replacements, or installation of equipment, at the project, and for investigations and inspections necessary thereto; provided, however, that the United States shall, except in case of emergency, give to the District reasonable notice in advance of such temporary discontinuance or reduc ion, and that the United States shall make such inspections and perform such maintenance and repair work, after consultation with the District, at such times and in such manner as to cause the least inconvenience to the District and that the United States shall prosecute such work with diligence, and, without unnecessary delay, resume delivery of water so discontinued or reduced.

(c) Should the delivery of water, for any reason or cause, other than any act or omission of the District, be discontinued or (after application of the agreement for interchange of energy as hereinabove set out) be reduced below the amount required for the generation of firm energy in accordance with the provisions of this contract, the total number of hours of such discontinuance or reduction in any year shall be determined by taking the sum of the number of hours during which the delivery of water is totally discontinued, plus the product of the number of hours during which the delivery of water is partially reduced and the percentage of said partial reduction below the actual quantity of water required for generation of firm energy. Total or partial reductions in the delivery of water which do not reduce the power output below the amount required at the time for generation of firm energy will not be considered in determining the total hours of discontinuance in any year. The minimum annual payment specified in Article 14 hereof shall be reduced by the ratio that the total number of hours of such discontinuance bears to eight thousand seven hundred sixty (8,760).

(d) In no event shall any liability accrue against the United States, its officers, agents and/or employees, for any damage, direct or indirect, arising on account of drought, hostile diversion, Act of God, or the public enemy, or other similar cause, nevertheless interruptions in delivery of water occasioned by such causes shall be governed as provided in this Article 10. In the event of shortage of electrical energy at Boulder Power Plant due to shortage of water, the available electrical energy shall be prorated among all allottees concerned, on the basis of their respective obligations to take and/or pay for firm energy in the year of operation in which the shortage occurs.

MEASUREMENT OF ENERGY

11. All electrical energy delivered at Boulder Power Plant shall be measured at generator voltage. Suitable correction shall be made in the amounts of energy as measured at generator voltage to cover step-up transformer losses. The electrical energy delivered hereunder during any period in which the meters furnished to measure such electrical energy fail to register shall, for billing purposes, be estimated from the best information available. Energy delivered to the District at points other than Boulder Dam shall be measured by meters furnished and maintained by the United States. The testing of meters and calibration of testing equipment shall be in accordance with Article 19 of Exhibit 1. If said exhibit should be terminated the same provisions shall apply as nearly as may be.

ENERGY RATES AND GENERATING CHARGES

12. The rates and charges to be paid by the District for electrical energy under this contract shall be in accordance with those specified in Exhibit 2. The right of the District to take energy at the rate for secondary energy shall not be impaired by reason of the fact that another allottee has not discharged its obligation to pay for energy at the firm rate.

BILLING AND PAYMENTS

13. (a) The District shall pay monthly for electrical energy and for the generation thereof in accordance with the energy rates and generating charges specified in Exhibit 2. When energy taken in any month is not in excess of one-twelfth (1/12) of the minimum annual obligation, as determined under subdivisions (a) and (b) of Article 14 hereof, the energy bill for such month shall be computed at the rate for firm energy in effect when such energy was taken on the basis of the actual amount of energy used during such month. All energy used during any month in excess of one-twelfth (1/12) of such minimum annual obligation for firm energy shall be paid for at the rate for secondary energy in effect when such energy was taken; provided, however, that the secondary rate shall not apply to any energy taken during any month unless and until an amount of energy equivalent to one-twelfth (1/12) of such minimum annual obligation for firm energy has been taken for all months, beginning with the month of June immediately preceding; provided, however, that the bill for energy for the month of May of each year shall not be less than the difference between the minimum annual energy payment, as provided in Article 14, hereof, and the sum of the amounts charged for firm energy during the preceding eleven months, but in no event shall the sum of the amounts charged for energy for any year of operation exceed the product of the minimum quantity of firm energy which the District is obligated to take and/or pay for in such year of operation and the firm energy rate; plus the product of the quantity of energy taken by the District in such year of operation in excess of its firm energy obligation and the secondary energy rate. The United States will submit bills to the District by the tenth of each month immediately following the month during which the energy was generated, and payments shall be due on the first day of the month immediately succeeding. If such charges (less proper and applicable credits) are not paid when due an interest charge of one per centum (1%) of the amount unpaid shall be added thereto, and thereafter an additional interest charge of one per centum (1%) of the principal sum unpaid shall be added on the first day of each succeeding calendar month until the amount due, including such interest, is paid in full, but nothing contained in this article shall be construed as in any manner

abridging, limiting, or depriving the United States of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have.

(b) In accordance with the provisions of Section 4 (b) of the Adjustment Act, in the event payments to the States of Arizona and Nevada, or either of them, under Section 2 (c) of the Adjustment Act, shall be reduced by reason of the collection of taxes mentioned in said section, adjustments shall be made, from time to time, with each allottee which shall have paid any such taxes, by credits or otherwise, for that proportion of the amount of such reductions which the amount of the payments of such taxes by such allottee bears to the total amount of such taxes collected.

(c) During any year beginning June 1, the District shall not use any secondary energy nor any unused State energy until it has first used subsequent to June 1 next preceding an amount of firm energy equivalent to one-twelfth of the amount of firm energy it is obligated to take and/or pay for annually, as determined under subdivisions (a) and (b) of Article 14 hereof, multplied by the number of months elapsed since June 1 next preceding.

MINIMUM ANNUAL PAYMENT

14. (a) The minimum quantity of firm energy which the District shall take and/or pay for at firm energy rates in each year of operation under the terms of this contract shall be 35.2517 per centum of all firm energy as defined in Article 3 of Exhibit 2. The minimum annual energy payment shall be reduced in case of interruptions or curtailment of delivery of water as provided in Article 10 hereof.

(b) *Absorption Period:* In order to afford a reasonable time for the District to absorb the energy contracted for, in determining the minimum annual payments for energy charges for firm energy for the year of operation ending May 31, 1942, the number of kilowatt-hours of firm energy which the District is obligated to take and/or pay for in the year of operation ending May 31, 1942, shall be 1,495,-380,088 kilowatt-hours. If the quantity of energy taken in said year of operation is in excess of the above stated amount, such excess shall be paid for at the rate for secondary energy.

(NOTE.—Subdivisions (c), (d), and (e) of Article 14 were eliminated by amendatory contract Ilr-1336 dated November 1, 1944.)

CONTINGENT ON FINAL EFFECTIVENESS OF ADJUSTMENT ACT

15. This contract shall not become effective unless and until the Adjustment Act shall have taken effect for all purposes pursuant to the provisions of Section 10 thereof, but thereupon this contract shall be fully effective and binding upon the parties hereto as of midnight,

Pacific Standard Time, on the last day of the calendar month in which the Adjustment Act shall have become fully effective. The original contract between the parties hereto shall terminate as of such effective date.

If the Adjustment Act shall not have taken effect for all purposes prior to June 1, 1941, this contract shall be null, void and of no force or effect.

DURATION OF CONTRACT

16. This contract shall remain in effect to and including May 31, 1987, unless sooner terminated as elsewhere herein provided. The District, if this contract has not been terminated prior to said date, shall be entitled to a renewal hereof upon such terms and conditions as may be authorized or required under the then existing laws and regulations, unless the property of the District dependent for its usefulness on a continuation of this contract be purchased or acquired, and the District be compensated for damages to its property, used and useful in the trans nission and distribution of such electrical energy and not taken, resulting from the termination of the supply.

NO ENERGY TO BE DELIVERED WITHOUT PAYMENT

17. Unless an extension of time for payment has first been obtained from the Secretary in writing, no energy shall be generated for, or delivered to, the District if it shall be in arrears for more than twelve (12) months in the payment of any charge due to the United States hereunder.

CONTRACT MAY BE TERMINATED IN CASE OF DEFAULT IN PAYMENT

18. If the District shall be in arrears for more than twelve (12) months in the payment of any charge, including interest, due to the United States hereunder, and shall not have obtained an extension of time from the Secretary for the payment thereof, or, if such extension be obtained, has not made such payment within the time as extended, then the Secretary shall have the right forthwith upon written notice to the District to terminate this contract and dispose of the energy herein allocated to the District as he may see fit; provided, he shall first give opportunity to the City and Edison Company to contract on equal and uniform terms and conditions, to be prescribed by the Secretary, for one-half of such energy, together with such portion of the remainder as the other shall not elect to take; and provided further, that such disposition shall be subject to the condition that the District shall have the right at any time within four (4) years from date of the first of the defaults for which the contract is terminated, to become reinstated hereunder by payment to the United States of all arrearages including interest, if any, together with any and all loss incurred by

the United States by reason of such termination. Nothing contained in this contract shall relieve the District from the obligation to make the United States whole, for the period of this contract, for all loss and/or damage occasioned by the failure of the District to take and/or pay for energy as provided in this contract.

ACCESS TO BOOKS AND RECORDS

19. The Secretary or his duly authorized representatives shall have free access at all reasonable times to the books and records of the District relating to the transmission and disposal of electrical energy hereunder, with the right at any time during office hours to make copies of or from the same.

USE OF PUBLIC AND RESERVED LANDS OF THE UNITED STATES

20. The use is authorized of such public and reserved lands of the United States as may be necessary or convenient for the construction, operation, and maintenance of main transmission lines, to transmit electrical energy generated at Boulder Dam, together with the use of such public and reserved lands of the United States as may be designated by the Secretary, from time to time, for camp sites, residences for employees, warehouses, and other uses incident to the operation and maintenance of such main transmission lines.

MODIFICATIONS

21. Any modification, extension, or waiver by the Secretary, subsequent to May 31, 1941, of any of the terms, provisions, or requirements of any regulation or contract, promulgated or executed subsequent to May 19, 1941, for the benefit of any one or more of the allottees, shall not be denied to the District.

DISPUTES AND DISAGREEMENTS

22. Disputes or disagreements between the United States and the District as to the interpretation or performance of the provisions of this contract shall be determined either by arbitration or court proceedings. If in any such arbitration or court proceedings or otherwise any sum or amount paid by the District on the demand or bill of the United States under this contract shall be held not to have been due or owing, payment shall not be deemed to have been voluntary, and such sum or amount shall be refunded. Whenever a controversy arises out of this contract, and the disputants agree to submit the matter to arbitration the Secretary shall name one arbitrator and the District shall name one arbitrator, and the two arbitrators thus chosen shall select a third arbitrator, but in the event of their failure to name

such third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Chief Justice of the Supreme Court of the United States. The decision of any two of such arbitrators shall be a valid award of the arbitrators, and shall be final and binding as to the parties hereto.

PRIORITY OF CLAIMS OF THE UNITED STATES

23. Claims of the United States arising out of this contract shall have priority over all others, secured or unsecured.

TITLE TO REMAIN IN UNITED STATES

24. The title to Boulder Dam and reservoir, Boulder Power Plant, and incidental works, including generating machinery and equipment, shall forever remain in the United States.

EFFECT OF WAIVER OF BREACH OF CONTRACT

25. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any provision hereof, or of any other or subsequent breach of any provision hereof.

TRANSFER OF INTEREST IN CONTRACT

26. No voluntary transfer of this contract, or of the rights of the District hereunder, shall be made without the written approval of the Secretary; and any successor or assign of the rights of the District, whether by voluntary transfer, judicial sale, trustee's sale, or otherwise, shall be subject to all the conditions of the Project Act as modified by the Adjustment Act, and of the Adjustment Act, and also subject to all the provisions and conditions of this contract to the same extent as though such successor or assign were the original contractor hereunder; provided, that the execution of a mortgage or trust deed, or judicial or trustee's sale made thereunder, shall not be deemed a voluntary transfer within the meaning of this Article.

NOTICES

27. (a) Any notice, demand, or request required or authorized by this contract to be given or made to or upon the United States shall be delivered, or mailed postage prepaid, to the Director of Power, United States Bureau of Reclamation, Boulder City, Nevada, except where, by the terms hereof, the same is to be given or made to or upon the Secretary, in which event it shall be delivered, or mailed postage prepaid, to the Secretary, at Washington, D. C.

(b) Any notice, demand, or request required or authorized by this contract to be given or made to or upon the District shall be delivered, or mailed postage prepaid, to the General Manager and Chief Engineer of The Metropolitan Water District of Southern California, Los Angeles, California.

(c) The designation of any person specified in this article or in any such request for notice, or the address of any such person, may be changed at any time by notice given in the same manner as provided in this article for other notices.

CONTRACT CONTINGENT UPON APPROPRIATIONS

28. This contract is subject to appropriations being made by Congress from time to time of money sufficient to make all payments and to provide for the doing and performance of all things on the part of the United States to be done and performed under the terms hereof, and to there being sufficient money available in the Colorado River Dam fund for such purposes. No liability shall accrue against the United States, its officers, agents, or employees, by reason of sufficient money not being so appropriated, or on account of there not being sufficient money in the Colorado River Dam fund for such purposes.

OFFICIALS NOT TO BENEFIT

29. 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.

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

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

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,

[SEAL]

By (S) F. E. WEYMOUTH,
General Manager and Chief Engineer.

Attest:

(S) A. L. GRAM,
Executive Secretary.

Approved as to form:

(S) JAMES H. HOWARD,
General Counsel.