

[APPENDIX 14]

BOULDER CANYON PROJECT
PROPOSED CONTRACT FOR DELIVERY OF WATER

THE UNITED STATES
AND
THE CITY OF SAN DIEGO

[Approved by the Secretary February 7, 1933]

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CONTRACT FOR DELIVERY OF WATER

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[PROPOSED] CONTRACT FOR DELIVERY OF WATER

(Approved by the Secretary February 7, 1933)

(1) This contract, made this _____ day of _____, nineteen hundred thirty-three, 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, between the United States of America hereinafter referred to as the United States, acting for this purpose by Ray Lyman Wilbur, Secretary of the Interior hereinafter styled the Secretary, and the City of San Diego, a municipal corporation of the State of California, hereinafter styled the city, organized under a freeholders' charter.

Witnesseth:

EXPLANATORY RECITALS

(2) Whereas, for the purpose of controlling the floods, improving navigation, and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters for reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary subject to the terms of the Colorado River compact is authorized to construct, operate, and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon, adequate to create a storage reservoir of a capacity of not less than twenty million acre-feet of water, and a main canal and appurtenant structures located entirely within the United States connecting the Laguna Dam or other suitable diversion dam with the Imperial and Coachella Valleys in California; and

(3) Whereas, the United States contemplates entering into an agreement with Imperial Irrigation District, an irrigation district organized and existing under and by virtue of the laws of the State of California, providing among other things, for the construction of a main canal and appurtenant structures, authorized as aforesaid, and reserving under conditions to be therein stated, the right to increase the capacity of said works and to contract for such increased capacity with other agencies for the delivery of water for use within the United States; and

(4) Whereas, the United States and the city contemplate hereafter entering into a contract by which provision will be made for increasing, for the city's benefit and at its cost, the capacity of the main canal and appurtenant works to be constructed for Imperial Irrigation District, as aforesaid; and

(5) Whereas, the city is desirous of entering into a contract for the delivery to it of water from Boulder Canyon Reservoir;

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

DELIVERY OF WATER BY UNITED STATES

(7) The United States shall, from storage available in the reservoir created by Hoover Dam, deliver to the city each year at a point in the Colorado River immediately above Imperial Dam, so much water as may be necessary to supply the city a total quantity, including all other waters diverted by the city from the Colorado River, in the amounts and with priorities in accordance with the recommendation of the Chief of the Division of Water Resources of the State of California, as follows (subject to the availability thereof for use in California under the Colorado River compact and the Boulder Canyon project act):

The waters of the Colorado River available for use within the State of California under the Colorado River compact and the Boulder Canyon project act shall be apportioned to the respective interests below named and in amounts and with priorities therein named and set forth, as follows:

SECTION 1. A first priority to Palo Verde Irrigation District for beneficial use exclusively upon lands in said district as it now exists and upon lands between said district and the Colorado River, aggregating (within and without said district) a gross area of 104,500 acres, such waters as may be required by said lands.

SEC. 2. A second priority to Yuma project of United States Bureau of Reclamation for beneficial use upon not exceeding a gross area of 25,000 acres of land located in said project in California, such waters as may be required by said lands.

SEC. 3. A third priority, (a) to Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa," adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 3,850,000 acre-feet of water per annum less the beneficial consumptive use under the priorities designated in sections 1 and 2 above. The rights designated (a) and (b) in this section are equal in priority. The total beneficial consumptive use under priorities stated in sections 1, 2, and 3 of this article shall not exceed 3,850,000 acre-feet of water per annum.

SEC. 4. A fourth priority to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the coastal plain of Southern California, 550,000 acre-feet of water per annum.

SEC. 5. A fifth priority, (a) to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the coastal plain of Southern California, 550,000 acre-feet of water per annum, and (b) to the City of San Diego and/or County of San Diego, for beneficial consumptive use, 112,000 acre-feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

SEC. 6. A sixth priority, (a) to Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the

"Lower Palo Verde Mesa," adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 300,000 acre-feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

SEC. 7. A seventh priority of all remaining water available for use within California, for agricultural use in the Colorado River Basin in California, as said basin is designated on map No. 23000 of the Department of the Interior, Bureau of Reclamation.

SEC. 8. So far as the rights of the allottees named above are concerned, the Metropolitan Water District of Southern California and/or the City of Los Angeles shall have the exclusive right to withdraw and divert into its aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said district and/or said city (not exceeding at any one time 4,750,000 acre-feet in the aggregate) by reason of reduced diversions by said district and/or said city; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release, and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of American reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between said district and/or said city and such users resulting therefrom.

SEC. 9. In addition, so far as the rights of the allottees named above are concerned, the City of San Diego and/or County of San Diego shall have the exclusive right to withdraw and divert into an aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said city and/or said county (not exceeding at any one time 250,000 acre-feet in the aggregate) by reason of reduced diversions by said city and/or said county; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release, and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between the said city and/or said county and such users resulting therefrom.

SEC. 10. In no event shall the amounts allotted in this agreement to the Metropolitan Water District of Southern California and/or the City of Los Angeles be increased on account of inclusion of a supply for both said district and said city, and either or both may use said apportionments as may be agreed by and between said district and said city.

SEC. 11. In no event shall the amounts allotted in this agreement to the City of San Diego and/or to the County of San Diego be increased on account of inclusion of a supply for both said city and said county, and either or both may use said apportionments as may be agreed by and between said city and said county.

SEC. 12. The priorities hereinbefore set forth shall be in nowise affected by the relative dates of water contracts executed by the Secretary of the Interior with the various parties.

The Secretary reserves the right to, and the district agrees that he may, contract with any of the allottees above named in accordance with the above-stated recommendation, or, in the event that such recommendation as to Palo Verde Irrigation District is superseded

by an agreement between all the above allottees or by a final judicial determination, to contract with the Palo Verde Irrigation District in accordance with such agreement or determination; provided, that priorities numbered fourth and fifth shall not thereby be disturbed.

Said water shall be delivered continuously as far as reasonable diligence will permit, but the United States shall not be obligated to deliver water to the city when for any reason such delivery would interfere with the use of Hoover Dam and Boulder Canyon Reservoir for river regulation, improvement of navigation, flood control, and/or satisfaction of perfected rights in or to the waters of the Colorado River or its tributaries, in pursuance of Article VIII of the Colorado River compact, and this contract is made upon the express condition and with the express covenant that the right of the city to waters of the Colorado River or its tributaries is subject to and controlled by the Colorado River compact. The United States reserves the right to discontinue or temporarily reduce the amount of water to be delivered for the purpose of investigation, inspection, maintenance, repairs, replacements, or installation of equipment and/or machinery at Hoover Dam, but so far as feasible the United States will give the city reasonable notice in advance of such temporary discontinuance or reduction. The United States, its officers, agents, and employees shall not be liable for damages when, for any reason whatsoever, suspensions or reductions in delivery of water occur.

Deliveries hereunder shall be in satisfaction of the allocation to the City and the County of San Diego, and shall be used within the county as the city and the county may agree, or as the State of California may allocate in the event of disagreement between the city and the county.

This contract is for permanent service, but is made subject to the express covenant and condition that in event water for the city is not taken or diverted by the city hereunder for district purposes within a period of ten (10) years from and after completion of Hoover Dam as announced by the Secretary, it may in such event, upon the written order of the Secretary, and after hearing, become null and void and of no effect.

RECEIPT OF WATER BY CITY

(8) The city shall receive the water to be delivered to it by the United States under the terms hereof at the point of delivery above stated, and shall perform all acts required by law or custom in order to maintain its control over such water and to secure and maintain its lawful and proper diversion from the Colorado River.

MEASUREMENT OF WATER

(9) The water to be delivered hereunder shall be measured by such measuring and controlling devices or such automatic gages, or both, as shall be satisfactory to the Secretary. Said measuring and controlling devices or automatic gages shall be furnished, installed, and maintained by and at the expense of the city, but they shall be and remain at all times under the complete control of the United States, whose authorized representatives may at all times have access to them over the lands and rights of way of the city.

RECORD OF WATER DIVERTED

(10) The city shall make full and complete written monthly reports as directed by the Secretary, on forms to be supplied by the United States, of all water diverted from the Colorado River. Such reports shall be made by the fifth day of the month immediately succeeding the month in which the water is diverted, and the records and data from which such reports are made shall be accessible to the United States on demand of the Secretary.

CHARGE FOR DELIVERY OF WATER

(11) A charge of twenty-five cents (\$0.25) per acre-foot shall be made for water delivered to the city hereunder during the Hoover Dam cost repayment period.

MONTHLY PAYMENTS AND PENALTIES

(12) The city shall pay monthly for all water delivered to it hereunder, or diverted by it from the Colorado River, in accordance with the rate herein in article eleven (11) established. Payments shall be due on the first of the second month immediately succeeding the month in which water is delivered and/or diverted. If such charges are not paid when due, a penalty of one per centum (1%) of the amount unpaid shall be added thereto, and thereafter an additional penalty of one per centum (1%) of the amount unpaid shall be added on the first day of each calendar month during such delinquency.

REFUSAL OF WATER IN CASE OF DEFAULT

(13) The United States reserves the right to refuse to deliver water to the city in the event of default for a period of more than twelve (12) months in any payment due or to become due the United States under this contract.

INSPECTION BY THE UNITED STATES

(14) The Secretary or his representatives shall at all times have the right of ingress to and egress from all works of the city for the purpose of inspection, repairs, and maintenance of works of the United States, and for all other proper purposes. The Secretary or his representatives shall also have free access at all reasonable times to the books and records of the city relating to the diversion and distribution of water delivered to it hereunder with the right at any time during office hours to make copies of or from the same.

DISPUTES OR DISAGREEMENTS

(15) Disputes or disagreements as to the interpretation or performance of the provisions of this contract shall be determined either by arbitration or court proceedings, the Secretary of the Interior being authorized to act for the United States in such proceedings. Whenever a controversy arises out of this contract, and the parties hereto agree to submit the matter to arbitration the city shall name one arbitrator and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect three other arbitrators, but in

the event of their failure to name all or any of the three arbitrators within five (5) days after their first meeting, such arbitrators not so elected shall be named by the senior judge of the United States Circuit Court of Appeals for the Ninth Circuit. The decision of any three of such arbitrators shall be a valid and binding award of the arbitrators.

RULES AND REGULATIONS

(16) There is reserved to the Secretary the right to prescribe and enforce rules and regulations governing the delivery and diversion of water hereunder. Such rules and regulations may be modified, revised, and/or extended from time to time after notice to the city and opportunity for it to be heard, as may be deemed proper, necessary, or desirable by the Secretary to carry out the true intent and meaning of the law and of this contract, or amendments hereof, or to protect the interests of the United States. The city hereby agrees that in the operation and maintenance of its diversion works and aqueduct, all such rules and regulations will be fully adhered to.

AGREEMENT SUBJECT TO COLORADO RIVER COMPACT

(17) This contract is made upon the express condition and with the express understanding that all rights hereunder shall be subject to and controlled by the Colorado River compact, being the compact or agreement signed at Santa Fe, N. Mex., November 24, 1922, pursuant to act of Congress approved August 19, 1921, entitled "An act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," which compact was approved in section 13 (a) of the Boulder Canyon project act.

PRIORITY OF CLAIMS OF THE UNITED STATES

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

CONTINGENT UPON APPROPRIATIONS

(19) This contract is subject to appropriations being made by Congress from year to year of moneys sufficient to do the work provided for herein, and to there being sufficient moneys available in the Colorado River Dam fund to permit allotments to be made for the performance of such work. No liability shall accrue against the United States, its officers, agents, or employees, by reason of sufficient moneys not being so appropriated nor on account of there not being sufficient moneys in the Colorado River Dam fund to permit of said allotments. This agreement is also subject to the condition that if for any reason construction of Hoover Dam is not prosecuted to completion with reasonable diligence, then and in such event either party hereto may terminate its obligations hereunder upon one (1) year's written notice to the other party hereto.

RIGHTS RESERVED UNDER SECTION 3737 REVISED STATUTES

(20) All rights of action for breach of any of the provisions of this contract are reserved to the United States as provided in section 3737 of the Revised Statutes of the United States.

REMEDIES UNDER CONTRACT NOT EXCLUSIVE

(21) Nothing contained in this contract 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.

INTEREST IN CONTRACT NOT TRANSFERABLE

(22) No interest in this agreement is transferable, and no sublease shall be made by the city without the written consent of the Secretary, and any such attempted transfer or sublease shall cause this contract to become subject to annulment at the option of the United States.

MEMBER OF CONGRESS CLAUSE

(23) 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 therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation 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 RAY LYMAN WILBUR,
Secretary of the Interior.

Attest:

NORTHCUTT ELY.

THE CITY OF SAN DIEGO,
By _____,

Attest:

_____,
City Clerk.

Approved as to form February 7, 1933.

RAY LYMAN WILBUR,
Secretary of the Interior.

As evidence of its approval of the foregoing contract between the United States and the city, the County of San Diego has caused the signature of the president of its board of supervisors to be affixed thereto.

THE BOARD OF SUPERVISORS OF
SAN DIEGO COUNTY,
By _____