

[APPENDIX 16]

BOULDER CANYON PROJECT

REGULATIONS FOR DELIVERY OF WATER IN ARIZONA

February 7, 1933

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BOULDER CANYON PROJECT

REGULATIONS: DELIVERY OF WATER IN ARIZONA

I

These regulations are promulgated to further the peaceful enjoyment by Arizona, California, and Nevada of the waters of the Colorado River. They state the form of a water-delivery contract which the United States will enter into with the State of Arizona, subject to certain conditions stated below.

II

The authorization for a contract provided in these regulations shall remain in force only for so long a period as the State of Arizona, and claimants to the use of water therein, do not interfere, by litigation or otherwise, with diversions of other holders, present and future, of water contracts with the United States and with diversion works constructed by or for them or the United States. In the event of such interference these regulations and the authorization herein contained shall thereupon become void.

III

The United States, subject to the foregoing conditions, will enter into a contract with the State of Arizona in substantially the form stated in Exhibit A, hereto annexed as a part hereof.

FEBRUARY 7, 1933.

RAY LYMAN WILBUR,
Secretary of the Interior.

EXHIBIT A

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

CONTRACT FOR DELIVERY OF WATER

This contract, made this — day of —, 1933, pursuant to the act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplemental 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 State of Arizona, acting for this purpose by — — —

Witnesseth:

EXPLANATORY RECITALS

Whereas, pursuant to the direction of the said Boulder Canyon project act, the Secretary has caused to be let a contract for the con-

struction of a dam, known and referred to hereinafter as Hoover Dam, in the main stream of the Colorado River at Black Canyon and said dam will create at the date of completion a storage reservoir having a maximum water-surface elevation at about one thousand two hundred and twenty-nine (1,229) feet above sea level (U. S. Geological Survey datum) and a capacity of about 30,500,000 acre-feet, and

3. Whereas, the Secretary is required by the said Boulder Canyon project act to use said dam and the reservoir created thereby first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic use, and the satisfaction of perfected rights in pursuance of Article VIII, of the Colorado River compact, and third, for power; and

4. Whereas, said Boulder Canyon project act authorizes the Secretary, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir and for delivery thereof at such points on the river as may be agreed upon, 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 therein stated; and

5. Whereas, the Secretary has heretofore promulgated regulations dated April 23, 1930, amended September 28, 1931, authorizing the execution of certain other water delivery contracts, and it is the desire of the parties to this agreement to contract for the storage of waters for use on lands in Arizona, and to assure the peaceful and uninterrupted performance of all such contracts, including this; and

6. Whereas, by direction of Congress, water has been reserved and appropriated for lands within the Colorado River Indian Reservation in Arizona, unaffected by the Colorado River compact by virtue of Article VII thereof; and

7. Whereas, the United States and the State of Arizona, contemplating the future construction of other reclamation projects and desiring to avoid claims by foreign water users to waters stored by Hoover Dam to the detriment of said projects, desire to provide for the storage of certain quantities of water for the benefit of lands in Arizona without prejudice to whatever right the parties may have hereafter to contract as to additional quantities of water; and

8. Whereas, the diversion works in the Colorado River contemplated for certain of the contractors under said regulations of April 23, 1930, amended September 28, 1931, particularly the proposed Imperial Dam, and the proposed dam for the Metropolitan Water District of Southern California near Parker, will be of service for delivery of waters covered by this contract, and it is essential to the purpose of this contract that the building of said works, when approved by the United States, shall not be interfered with;

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

DELIVERY OF WATER BY THE UNITED STATES

10. From storage available in the reservoir created by Hoover Dam, the United States will deliver under this contract each year at points of diversion hereinafter referred to on the Colorado River so much available water as may be necessary to enable the beneficial consumptive use in Arizona of not to exceed two million, eight

hundred thousand (2,800,000) acre-feet annually by all diversions effected from the Colorado River and its tributaries below Lee Ferry (but in addition to all uses from waters of the Gila River and its tributaries), subject to the following provisions:

(a) This contract is without prejudice to the claims of the State of Arizona and States in the Upper Basin as to their respective rights in and to waters of the Colorado River, and relates only to water physically available for delivery in the Lower Basin under the terms hereof.

(b) The United States does not undertake by this contract to deliver water above Hoover Dam; but the obligation to deliver water below Hoover Dam shall be diminished to the extent that consumptive uses in Arizona effected by diversions from the Colorado River and its tributaries below Lee Ferry diminish the inflow to the reservoir.

(c) It is recognized by the parties hereto that differences of opinion may exist between the State of Arizona and other contractors as to what part of the water contracted for by each falls within Article III (a) of the Colorado River compact, what part within Article III (b) thereof, what part is surplus water under said compact, what part is unaffected by said compact, and what part is affected by various provisions of section 4 (a) of the Boulder Canyon project act. Accordingly, while the United States undertakes to supply, from the regulated discharge of Hoover Dam, waters in quantities stated by this contract as well as contracts heretofore or hereafter made pursuant to regulations of April 23, 1930, amended September 28, 1931, this contract is without prejudice to relative claims of priorities as between the State of Arizona and other contractors with the United States, and shall not otherwise impair any contract heretofore authorized by said regulations.

(d) This contract is without prejudice to the right of the United States to make further disposition of water available for use in the Lower Colorado River Basin not heretofore allocated by regulations nor herein contracted for, or to the respective claims of the States of Arizona, New Mexico, Utah, California, and Nevada, and of Mexico, to such additional water.

(e) The water provided for in this contract shall be delivered continuously, so far as reasonable diligence will permit, to the extent such water is beneficially used for irrigation and domestic purposes. 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, replacement or installation of equipment and/or machinery at Hoover Dam, but so far as feasible will give 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.

SUBORDINATE CONTRACTS AUTHORIZED

11. Deliveries of water subject to the terms of this contract may be made for lands within any Indian Reservation in Arizona, and to any individual, irrigation district, corporation, or any political subdivision of the State of Arizona, which may qualify under the Reclamation Law or other Federal statute. Contracts with such water users

for such deliveries, subject to the terms of this contract, may be made by the Secretary in his discretion. Such contracts and deliveries made thereunder shall be deemed as made in discharge, *pro tanto*, of the obligations of this contract.

POINTS OF DIVERSION: MEASUREMENT OF WATER

12. The water to be delivered under this contract shall be measured at the points of diversion, or elsewhere as the Secretary may direct, by measuring and controlling devices or automatic gages approved by the Secretary, which, however, shall be furnished, installed, and maintained by the States of Arizona, or the users of water. Said measuring and controlling devices or automatic gages shall be subject to the inspection of the United States, whose authorized representatives may at all times have access to them, and any deficiencies or inaccuracies found shall be promptly corrected. The United States shall be under no obligation to deliver any water which may be diverted at points at which such devices are not maintained, but in the event that diversions are made at points where measuring and controlling devices or automatic gages are not maintained in accordance with this contract, the Secretary shall estimate the quantity of the diversions and his determination shall be final.

RECORDS OF WATER DELIVERIES

13. The State of Arizona shall cause to be made by water users or otherwise monthly reports 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 delivered.

NO CHARGES FOR DELIVERY OF WATER

14. No charge shall be made for water or for the use, storage, or delivery of water for irrigation, or water for potable purposes, in Arizona.

NO ARIZONA DIVERSIONS TO BE MADE EXCEPT PURSUANT HERETO: DIVERSIONS IN OTHER STATES

15. It is the object of this contract to assure to those (including the State of Arizona) who have contracted or may hereafter contract with the United States for delivery of waters stored by Hoover Dam, the quiet performance of their respective contracts. It is accordingly agreed that:

(a) The State of Arizona will hereafter grant no permits for, nor otherwise authorize, uses of the waters of the Colorado River and its tributaries (other than the Gila River and its tributaries), except subject to the terms of this contract.

(b) The State of Arizona and its permittees will not interfere, by litigation or otherwise, with deliveries of water under any contract between the United States and water users in the State of Nevada, or any contract made pursuant to regulations dated April 23, 1930, amended September 28, 1931, nor with the construction of diversion works by or for the holder thereof, nor with diversions or other uses affected by such works; unless and until such contractor interferes, by litigation or otherwise, with the enjoyment of this contract. But

in the event of such interference by any other such contractor with the enjoyment of this contract, the State may, at its election, either rely on this contract, or assert all rights which the State or any water user therein would have had against such party if this contract had not been made.

(c) Breach by the State of any of the provisions of this article shall entitle the United States at its option to cancel this contract and any or all subordinate contracts referred to in Article XI.

DURATION OF CONTRACT

16. This contract is for permanent service, subject to the provisions contained in the preceding article.

DISPUTES AND DISAGREEMENTS

17. Whenever a controversy arises out of this contract, and if the parties hereto then agree to submit the matter to arbitration, the State of Arizona shall name one arbitrator and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect three other arbitrators within fifteen (15) days after their first meeting, but in the event of their failure to name all or any of the three arbitrators within thirty (30) 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 the five shall be a valid and binding award.

RULES AND REGULATIONS

18. The Secretary may prescribe and enforce rules and regulations governing the delivery and diversion of water hereunder, but such rules and regulations shall be promulgated, modified, revised, and/or extended from time to time only after notice to the State of Arizona and opportunity for it to be heard.

AGREEMENT SUBJECT TO COLORADO RIVER COMPACT

19. As required by section 13 (c) of the Boulder Canyon project act, 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, New Mexico, 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,' as approved by the Boulder Canyon project act, but is without prejudice to the respective contentions of the State of Arizona and of the parties to said compact, as to interpretation thereof.

EFFECTIVE DATE OF CONTRACT

20. This contract shall take effect when an act of the legislature of Arizona ratifying it shall have become effective, but within two years of the date hereof.

INTEREST IN CONTRACT NOT TRANSFERABLE

21. No interest in or under this contract shall be transferable by either party without the written consent of the other.

MEMBER OF CONGRESS CLAUSE

22. 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 considered 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.
THE STATE OF ARIZONA,

By _____

Approved as to form, February 7, 1933:

RAY LYMAN WILBUR, *Secretary of the Interior.*

ATTEST:

The foregoing contract was ratified by act of the legislature of Arizona which became effective ———, 193—, true copy of which is hereto annexed.

_____,
Secretary of the State of Arizona.

III. LEGISLATION AND ORDERS

17. Legislation authorizing the Colorado River compact.
18. The Colorado River compact.
19. Analysis of the Colorado River compact.
20. The Boulder Canyon project act, annotated.
21. Rejected amendments to the Boulder Canyon project act.
22. The President's proclamation of June 25, 1929.
23. The appropriation acts.
24. Order to commence construction.
25. Order naming the dam Hoover Dam.
26. Cession of jurisdiction by Nevada and acceptance by United States.
27. Executive order establishing the reservoir as a bird refuge.
28. Proposed legislation for establishing Boulder Canyon National Reservation.