

[APPENDIX 15]

PROPOSED CONTRACT
FOR DELIVERY OF WATER

UNITED STATES AND PALO VERDE
IRRIGATION DISTRICT

[Approved by the Secretary February 7, 1933]

359

CONTRACT FOR DELIVERY OF WATER

Article

1. Preamble.
- 2-5. Explanatory recitals.
6. Delivery of water by the United States.
7. Receipt of water by district.
8. Measurement of water.
9. Record of water diverted.
10. No charge for delivery of water.
11. Inspection by the United States.
12. Disputes or disagreements.
13. Rules and regulations.
14. Agreement subject to Colorado River compact.
15. Priority of claims of the United States.
16. Contingent upon appropriations.
17. Rights reserved under section 3737, Revised Statutes.
18. Remedies under contract not exclusive.
19. Interest in contract not transferable.
20. Member of Congress clause.

[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 Palo Verde Irrigation District, an irrigation district created, organized, and existing under and by virtue of an act of the Legislature of the State of California approved June 21, 1923 (ch. 452, Statutes of California, 1923), as amended, known as and designated "Palo Verde Irrigation District Act," with its principal office at Blythe, Riverside County, Calif., hereinafter referred to as the district.

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

(3) Whereas, after full consideration of the advantages of both the Black Canyon and Boulder Canyon dam sites, the Secretary has determined upon Black Canyon as the site of the aforesaid dam, hereinafter styled the Hoover Dam, creating thereby a reservoir to be hereinafter styled the Boulder Canyon Reservoir; and

(4) Whereas, the district is desirous of entering into a contract for the delivery to it of water from Boulder Canyon Reservoir; and it is to the mutual interest of the parties hereto that such contract be executed and the rights of the district in and to waters of the river be hereby defined.

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

DELIVERY OF WATER BY UNITED STATES

(6) The United States shall, from storage available in the Boulder Canyon Reservoir, deliver to the district each year at a point in the Colorado River immediately above the district's point of diversion known as Blythe Intake, (or as relocated within two miles of the present intake) so much water as may be necessary to supply the district a total quantity, including all other waters diverted for use

of the district 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 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 the 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 reducing 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 America 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 accumulations, 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 no wise 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. The district reserves the right to establish, at any time, by judicial determination, its rights to divert and/or use water from the Colorado River. In the event the above stated recommendation as to the district is superseded by an agreement between all the above allottees or by a final judicial determination, the parties hereto reserve the right to further contract in accordance with such agreement or such judicial determination; provided, that priorities numbered fourth and fifth shall not thereby be disturbed.

As far as reasonable diligence will permit said water shall be delivered as ordered by the district, and as reasonably required for potable and irrigation purposes within the areas for which the district

is allotted water as described in the above stated recommendation. This contract is for permanent water service, but is subject to the condition that Hoover Dam and Boulder Canyon Reservoir 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 district and the United States shall observe and be subject to, and controlled by said Colorado River compact in the construction, management and operation of Hoover Dam, and other works and the storage, diversion, delivery and use of water for the generation of power, irrigation, and other purposes. The United States reserves the right to temporarily discontinue or 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 as far as feasible the United States will give the district 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, suspension or reductions in delivery of water occur. This contract neither prejudices nor admits any claim of the district on account of alleged changes in elevation of the river bed howsoever caused, or the effect of such alleged changes on the district's diversion of water delivered hereunder. This contract is without prejudice to any other or additional rights which the district may now have not inconsistent with the foregoing provisions of this article, or may hereafter acquire in or to the waters of the Colorado River.

RECEIPT OF WATER BY DISTRICT

(7) The district 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 at its own expense convey such water to its distribution system, 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

(8) The water to be delivered hereunder shall be measured at Blythe Intake 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 district, 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 district.

RECORD OF WATER DIVERTED

(9) The district shall make full and complete written reports as directed by the Secretary, on forms to be supplied by the United States, of all water diverted from the Colorado River, and the disposition thereof. The records and data from which such reports are made shall be accessible to the United States on demand of the Secretary.

NO CHARGE FOR DELIVERY OF WATER

(10) The district shall not be required to pay to the United States any tolls, rates, or charges of any kind for or on account of the storage or delivery of water hereunder.

INSPECTION BY THE UNITED STATES

(11) The Secretary or his representatives shall at all times have the right of ingress to and egress from all works of the district 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 district 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

(12) 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 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 district 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 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 such arbitrators shall be a valid and binding award of the arbitrators.

RULES AND REGULATIONS

(13) There is reserved to the Secretary the right to prescribe and enforce rules and regulations not inconsistent with this contract, governing the diversion and delivery of water hereunder to the district and to other contractors. Such rules and regulations may be modified, revised and/or extended from time to time after notice to the district 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 thereof, or to protect the interests of the United States. The district hereby agrees that in the operation and maintenance of its diversion works at Blythe Intake, all such rules and regulations will be fully adhered to.

AGREEMENT SUBJECT TO COLORADO RIVER COMPACT

(14) This contract is made upon the express condition and with the express understanding that all rights based upon this contract 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," which compact was approved by the Boulder Canyon project act.

PRIORITY OF CLAIMS OF THE UNITED STATES

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

CONTINGENT UPON APPROPRIATIONS

(16) This contract is subject to appropriations being made by Congress from year to year of moneys sufficient to do the work contemplated hereby, 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

(17) 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

(18) Nothing contained in this contract shall be construed as in any manner abridging, limiting, or depriving the United States or the district 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. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any other provision hereof or of a subsequent breach of such provision.

INTEREST IN CONTRACT NOT TRANSFERABLE

(19) No interest in this agreement is transferable, and no sublease shall be made by the district 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

(20) 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.

PALO VERDE IRRIGATION DISTRICT,
By _____,
President.

Attest:
_____,
Secretary.

Approved as to form February 7, 1933.

RAY LYMAN WILBUR,
Secretary of the Interior.