

1265 Harbor Street
San Diego, California
November 22, 1934

Senator E. Fletcher
1020 9th Street
San Diego, California

Dear Col. Fletcher:

In setting down in writing the following ideas regarding San Diego's participation in Colorado River water projects, I am doing something I determined absolutely ~~not to do~~. Up until the voters turned down the All-American Canal contract this month, I like a good many other large tax payers regarded the contract of little importance because it apparently did not oblige the City to actually bring the water over the mountains to San Diego and it apparently was of insignificant expense to the City and might assist Imperial Valley in their plans. I find upon closer examination that it does neither.

In presenting my ideas to you, I am still unwilling to take any active part either in opposition to the contract if another election is called or in fostering the tentative plan I submit to you at the end of this letter. The City Trustees have never asked my advice and the Water Committee of the Chamber of Commerce has purposely refrained from inviting me into any of their consultations on the subject.

Contract for Construction of Capacity in Diversion Dam,
Main Canal and Appurtenant Structures

Boulder Canyon Project - All American Canal.

The above is the short title of the Contract that the San Diego City voters are asked to ratify, the same being between the United States and the City. The contract prorates the cost of building the Imperial Dam in the Colorado River and eighty miles of All American Canal from the Dam to the West Side Main Canal at the International Boundary Line in Imperial Valley, as between the City and the Imperial Irrigation District; maximum guaranteed construction expense thirty million dollars. It likewise provides that San Diego shall pay their proportion of the cost of Laguna Dam (\$1,600,000) and their proportion of all damages and operation and maintenance of both dams and the All American Canal. These obligations are fixed permanently on the City, whether they ever receive a drop of water or not.

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At the very outset, the contract is unfair to the Imperial Irrigation District. If the proration of above expenses San Diego is to pay is based on the division of Construction Capacity as the contract indicates, then San Diego's proportion is to Imperial Valley's proportion as 155 cu. sec. ft. is to an average of 8,5000 cu. sec. ft. or 1.82 %. The more fair proportion would be as to annual consumption of water allotted to each party by the Government in existing contract of water rights which proration would be as San Diego with a right of 125,000 acre feet per annum is to Imperial and Cochilla Valley with a right to about 3,268,000 acre feet per annum, or 3.4%. Imperial Irrigation District might finally bring this latter proration about, in which case the costs to San Diego as tabulated in the exhibit attached to this would be doubled.

Article 7 of the Contract, provides the City must pay its proportion of all damages incurred account of Dam and Canal. No one knows what these will be, but it is safe to presume that they can easily run to four million dollars based on the value of lands that may become water logged due to the silt free waters to be run in the canal and due to the backing up of the river twenty feet higher than Laguna Dam backs it

Article 8-b provides that the City must pay to the Imperial Irrigation District in advance its prorate share of maintenance operation etc. of dam and canal each year as Jan. 1. My guess as to what these costs will be is as good as anyones. The estimate of one million dollars per year for everything, corresponds to their costs over there for years past with the additional allowance for erosion along the new canal and for the great amount of sand that will drift into it during the wind storms through the sand hills (see Transactions American Society of Civil Engineers Vol. 38 - 1925).

Article 10-C provides that City pay its proportion of cost of existing Laguna Dam, both that already paid by District with interest at 6%, as well ~~as well~~ as future payments to the Government.

Article 13 refers to power, but San Diego is barred from participating in the power at the two principal power drops and that is Syphon Drop and Pilot Knob in excess of that developed by 8,5000 cu. sec. ft. The cost of developing power along the rest of the canal together with the long transmission lines and line losses involved, will leave no profit to the City for its prorata share of the power

Article 8-b provides the only relief to the City of the financial obligations set up in the contract and as interpreted by me in dollars on the table annexed to this letter. The Government must fail to finance the work or some part of it, before the City may be relieved. Article provides explicitly that the City must

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levy a tax each year to make its payments and all delinquencies will have $\frac{1}{2}$ of 1% added to them each month they are delinquent.

In general, I regard the contract as unfair both to Imperial Irrigation District for the reasons set up and to the City for a great many other reasons, some of which are the following:

First: The City is to get its water at the tail end of a canal to be operated and maintained by the Imperial Irrigation District. The City's right to water is secondary to the right and demand of the Imperial Irrigation District, and at times of shortage, as during the past six months, there might be no water for the city unless it should buy crops that will otherwise use the water or make some other financial arrangement with the District. (see Annex No. 2 to this letter for description of San Diego's secondary water right)

Second: Once contracted the City must forever pay the costs set up in the contract if the Government finishes the Canal, whether San Diego uses any water or not.

Third: The City will be a minority partner with the Imperial Irrigation District which District as of Jan. 1, 1933 owed \$1,634,387 current liability and \$14,261,950 Capital Liability and had defaulted on its bonds. The All American Canal Contract fixes on the District an additional liability of about twenty seven million dollars.

Fourth: The City receives its water at Imperial Dam in the Colorado River, a canal distance of 244 miles from El Capitan Reservoir. The water loss over this desert route will be at least twenty per cent, and while the District may absorb part of this loss during years of ample water supply, they will not during years of drought.

Conclusion

I do not at this time advocate the proposal to follow, but I think that at least before another election is called the proposal should be thoroughly investigated if it is actually necessary to contract with some one to protect San Diego's right to water in the Colorado River.

While the Metropolitan District of Southern California have many expensive propositions on their hands still a connection with them might be the lessor of the two evils in so far as San Diego is concerned. They do have carrying capacity in the aqueduct they are building to carry San Diego's 155 cu. sec. ft. of water without increasing their aqueduct and tunnel sizes other than pumping plants. It might be possible to get a carrying contract with them to carry San Diego water as far as San Jacinto. A preliminary survey has been made from San Jacinto to the San Dieguito River, and aqueduct distance of about sixty miles. With this carrying contract in their hands, it seems to me that San Diego could build this connection with the San Dieguito River at sometime

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in the future without any immediate obligation to spend any money. It then presents the opportunity of getting funds from Public Works to build a super Hodges Dam to receive and store Colorado River water. If such a plan can be worked out, it certainly is not to the best interest of the City and County of San Diego to vote on the All American Canal Contract at least for a while yet.

Very truly yours,

J. C. Allison
J. C. Allison

JCA:M

Year	Description	Amount
1943-	Estimated cost of S. D. Proportion of Damages to	\$ 14,000.00
1944-	Same schedule as 1943	46,000.00
1945-	" " " "	46,000.00
1946-	" " " "	46,000.00
1947-	" " " "	46,000.00
1948-	" " " " Less Damage (\$14,000)	32,000.00
1949-	" " " " Less Dist. Payment Laguna Dam	29,000.00
1950-	" " " " 1949	29,000.00
1951-	" " " " 1949	29,000.00
1952-	" " " " 1949	29,000.00
1953-	" " " " 1949 plus \$5,460.00 add. to Gov.	34,460.00
1954 to 1973 inclu.	same schedule as 1953	723,660.00
1974	Same schedule as 1953 plus \$16,380.00 to Gov.	50,840.00
1975	" " " 1974	50,840.00

\$ 1,363,268.76

- o It is presumed that All American Canal may be completed the latter part of 1937 and will be turned over by the Government to the Imperial Irrigation District in 1938 for operation and maintaining as provided in Article #11. Payments to Government on construction contract will therefore begin in 1938.
 - oo Total expenditures of Irrigation District run from as high as \$2,628,000 per annum in the year 1920 to as low as \$829,214 in 1932 (exclusive of Lateral Canal operation and maintenance but including bond interest and amortization). The total expenses of Imperial Irrigation District for 1932 for all items was \$1,973,246.67. The operation and maintenance alone in 1932 was \$957,151.25.
- The operation and maintenance and replacement expenses to be carried by Imperial Irrigation District on Imperial Dam and All American Canal is estimated to run \$1,000,000 per year. Dredging alone of canal through the mesa and sand hills is estimated to be necessary to remove two million cu. yards of sand which will drift into the canal on the average each year.
- ooo Under Article #7, San Diego must pay cost of damages due to existence of the Imperial Dam, and All American Canal. It is of course not known what these damages will run to.

Cash Payments to be Made by San Diego

If calculations made on Contracts Maximum annual consumption for each party, then proportion is 112,000 acre ft per yr : 3,268,000 - 3.4%

Year		Article	
1935	- Dec. 31 = 1.82% of \$96,000 due Gov.-Laguna Dam Contract -	10-C,	\$ 1,747.00
1936	- Dec. 31 = " " " " " " " " " "	"	1,747.00
1936	- Mar. 1 = 6% on prop. amt paid by I.I.D. " " (\$1,072,000)	"	1,110.62
1937	- Dec. 31 = 1.82% on \$96,000 due Gov. " " " "	"	1,747.00
1937	- Mar. 1 = 6% Interest to I.I.D. " " " "	"	1,110.62
1938	- Mar. 1 = " " " " " " " "	"	1,110.62
1938	- Mar. 1 = semi annual pmt. Due Gov. on \$30,000,000 prop. Article	11	2,730.00
1938	- Sept. 1 = " " " " " " " "	"	2,730.00
1938	- Dec. 31 = 1.82% on \$96,000 " " Laguna Dam	10-C	1,747.00
1939	- Jan. 1 = 1.82% of Dist. operation, int. Al Am. Canal (\$1,000,000)	8-b	18,200.00
1939	- Mar. 1 = Int. & first of 10 pmts. Laguna Dam Contract	10-2	3,061.66
1939	- Mar. 1 = semi annual pmt. Due Gov. on \$30,000,000 Article	11	2,730.00
1939	- Sept. 1 = " " " " " " " "	"	2,730.00
1939	- Dec. 31 = 1.82% on \$96,000 Laguna Dam Contract	10-C	1,747.00
1940	- Jan. 1 = Operation & Mtc.	8-b	18,200.00
1940	- Mar. 1 = semi annual pmt. on Cost Canal	Article 11	2,730.00
1940	- Sept. 1 = " " " " " " " "	"	2,730.00
1940	- Dec. 31 = Due Gov. on Laguna Dam Contract	10-2	873.60
1941	- Jan. 1 = Operation & Mtc.	8-b	18,200.00
1941	- Mar. 1 = Int. 3rd pmt Dist. Laguna Dam	10-2	3,061.66
1941	- Mar. 1 = Semi An. payment on Canal To Gov.	" 11	2,730.00
1941	- Sept. 1 = " " " " " " " "	" 11	2,730.00
1942	- Same schedule and amounts as 1941		26,721.66
1943	- Same schedule and amounts as 1941 plus \$5,460.00 increase		
	payment due Gov. on Canal Costs		32,181.66
1940	- Mar. 1 = Int. 2nd payment Dist Laguna Dam	10-2	3,061.66

NOTES ON DIVERSION OF WATERS OF COLORADO
RIVER SHOWING THE POSITION OF SAN DIEGO IN OBTAINING
A SUPPLY FROM THIS SOURCE

First let us look into the Colorado River Compact,
Article III, paragraphs (a), (b), and (c).

ARTICLE III

(a) There is hereby apportioned from the Colorado River system in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

Note:—Mexican use is now about 750,000 Acre-Feet annually. Rept. International Water Commission, Page 87

It is self-evident that under this statement any shortage in the Mexican supply will first be made up from the 1,000,000 acre-feet set up in paragraph (b).

Now let us look at House of Representatives Bill 5773 of the 70th Congress, 2nd Session, Section 4 (a).

Sec. 4 (a). This Act shall not take effect and no authority shall be exercised hereunder and no work shall be begun and no moneys expended on or in connection with the works or structures provided for in this Act, and no water rights shall be claimed or initiated hereunder, and no steps shall be taken by the United States or by others to initiate or perfect any claims to the use of water pertinent to such works or structures unless and until (1) the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have rati-

3.

Due to the fact of elevating the Colorado River by 20 feet more with Imperial Dam and because of the elevation and character of soil which the clear water of the All American Canal will run through, these damages may run to \$4,000,000. This estimate is used and is provided to be paid for in the year 1943 to 1947 inclusive.

fied the Colorado River compact, mentioned in section 12 hereof, and the President by public proclamation shall have so declared, or (2) if said States fail to ratify the said compact within six months from the date of the passage of this Act then, until six of said States, including the State of California, shall ratify said compact and shall consent to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and shall have approved said compact without conditions, save that of such six-State approval, and the President by public proclamation shall have so declared, and, further until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this Act, that ~~the~~ the aggregate annual consumptive use (diversion less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph a of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

The States of Arizona, California, and Nevada are authorized to enter into an agreement which shall provide (1) that of the 7,500,000 acre-feet annually apportioned to the lower basin by paragraph (a) of Article III of the Colorado River compact, there shall be apportioned to the State of Nevada 300,000 acre-feet and to the State of Arizona 2,800,000 acre-feet for exclusive beneficial consumptive use in perpetuity, and (2) that the State of Arizona may annually use one-half of the excess or surplus waters unapportioned by the Colorado River compact, and (3) that the State of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of said State, and (4) that the waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, shall never be subject to any diminution whatever by any allowance of water which may be made by treaty or otherwise to the United States of Mexico but if, as provided in paragraph (c) of Article III of the Colorado River compact, it shall become necessary to supply water to the United States of Mexico from waters over and above the quantities which are surplus as defined by said compact, then the State of California shall and will mutually agree with the State of Arizona to supply, out of the main stream of the Colorado River, one-half of any deficiency which must be supplied to Mexico by the lower basin, and (5) that the State of California shall and will further mutually agree with the States of Arizona and Nevada that none of said three States shall withhold water and none shall require the delivery of water, which can not reasonably be applied to domestic and agricultural uses, and (6) that all of the provisions of said

tri-State agreement shall be subject in all particulars to the provisions of the Colorado River compact, and (7) said agreement to take effect upon the ratification of the Colorado River compact by Arizona, California, and Nevada.

It will be seen from the foregoing that the division set up in Sec. 4 (a) absorbs the 7,500,000 acre-feet of firm water set forth in Paragraph (a) of Article III of the Colorado River compact as follows:

California	4,400,000	Acre-feet
Nevada	300,000	" "
Arizona	2,800,000	" "
	7,500,000	Acre-feet

With the foregoing clearly in mind, let us now look carefully into the position of the City of San Diego.

Article 17 of the Boulder Canyon Project All American Canal Draft of Contract under date of October 3, 1931, gives the priorities of the various allotments of water as follows.

DELIVERY OF WATER BY UNITED STATES

Article 17. The United States shall, from storage available in the reservoir created by Hoover Dam, deliver to the District each year at a point in the Colorado River immediately above Imperial Dam, so much water as may be necessary to supply the District a total quantity, including all other waters diverted for use within the District from the Colorado River, in the amount 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.

Section 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.

Section 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 designed in Sections 1 and 2 above. The rights designated (a) and (b) in this section under priorities stated in Sections 1, 2, and 3 of this article shall not exceed 3,850,000 acre-feet of water per annum.

Section 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.

Section 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 the section are equal in priority.

Section 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.

Section 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.

Section 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 4,700,000 acre-feet in the aggregate) by reason of reduced diversion 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

Section 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.

Section 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.

Section 11. In no event shall the amounts allotted in this agreement to the City of San Diego and/or 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.

Section 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, 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.

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 boundaries of the District in the Imperial and Coachella Valleys in California. This contract 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, Imperial Dam, All-American Canal, 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 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. Nothing in this contract shall be construed to prevent the District from diverting water to the full capacity of the All-American Canal if and when water over and above the

quantity apportioned to it hereunder is available, and no power development as Imperial and/or Laguna Dam shall be permitted to interfere with such diversion by the District, but, except as provided in Article twenty-one (21), water shall not be diverted, transported or carried by or through the works to be constructed hereunder for any agency other than the District, except by written consent of the Secretary.

A study of the priorities in Sections 1, 2, 3, and 4 show the following condition:

Sections 1, 2, and 3 limit the total of the priorities covered by these sections as	3,850,000 Acre-feet
Section 4 is limited to	550,000 " "
or a total of	4,400,000 Acre-feet

By referring to the allocation to the three lower basin states shown on page 3 it is discovered that the total amount allotted to California is 4,400,000 acre-feet which is all absorbed as shown above with nothing for San Diego.

San Diego does receive an allotment in Section 5, but this allotment is out of surplus if, as, and when they may become available, but San Diego has no part whatever in the firm water given California.

It is true that under Paragraph (b) of Article III of the Colorado River Compact that the Lower Basin is given there an additional one million acre-feet.

It must be remembered that the present use in Mexico is at least 750,000 acre-feet annually. In the event of a deficiency it is only fair to assume that the Mexican supply will be made up first from the one million acre-feet mentioned in paragraph (b). This would then leave the difference between 750,000 and one million acre-feet or 250,000 acre-feet which would be the available surplus out of which San Diego hopes to obtain her supply from the Colorado River.

Section 5 of the Boulder Canyon Contract does allocate an additional 550,000 acre-feet to the Metropolitan District and to the City of San Diego and/or County of San Diego 112,000 acre-feet per annum. This section also states that the priorities set up in section 5 are equal. In case of shortage, therefore, San Diego will be entitled only to 17% of the remaining surplus if any exists.

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COPY

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT
ALL-AMERICAN CANAL
THE CITY OF SAN DIEGO, CALIFORNIA

Contract for Construction of Capacity in Diversion Dam,
Main Canal and Appurtenant Structures.

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT
ALL-AMERICAN CANAL
THE CITY OF SAN DIEGO, CALIFORNIA

Contract for Construction of Capacity in Diversion Dam,
Main Canal and Appurtenant Structures.

Article 1. THIS CONTRACT, made this _____ day of _____, nineteen hundred thirty-four, 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, and the Act of Congress approved June 16, 1933 (48 Stat., 195), designated the National Industrial Recovery Act, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, acting for this purpose by Harold L. Ickes, Federal Emergency Administrator of Public Works and Secretary of the Interior, hereinafter styled the Secretary, and THE CITY OF SAN DIEGO, a municipal corporation of the State of California, organized under a freeholders' charter, hereinafter referred to as the City;

W I T N E S S E T H :

Explanatory Recitals

Article 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, which the Secretary is also authorized to construct if deemed necessary or advisable by him upon engineering or economic considerations, with the Imperial and Coachella Valleys in California, the expenditures for said main canal and appurtenant structures to be reimbursable as provided in the reclamation law; and

Article 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 Boulder Dam, creating thereby a reservoir to be hereinafter styled the Boulder Canyon Reservoir; and

Article 4. WHEREAS, (a) there has been executed under date of December 1, 1932, a contract, herein styled Imperial Contract, between the United States and Imperial Irrigation District, an irrigation district created, organized and existing under and by virtue of the laws of the State of California, hereinafter referred to as the District, which contract provides for the construction of a suitable diversion dam and main canal and appurtenant structures, therein and hereinafter respectively styled "Imperial Dam" and "All-American Canal", located entirely within the United States, connecting with the Imperial and Coachella

Valleys, and for the delivery to the District of stored water from Boulder Canyon Reservoir; and

(b) There has been executed under date of February 15, 1933, a contract between the United States and the City whereby the City was accorded certain storage rights under the conditions therein stated in said Boulder Canyon Reservoir, and the right under the conditions therein stated to have the United States deliver to the City at a point in the Colorado River immediately above Imperial Dam, the water to which the City may be entitled, (estimated in said contract to be 155 cubic feet per second), in accordance with the recommendation of the Chief of the Division of Water Resources of the State of California, set out in said contract; and

(c) The City is now desirous of entering into this contract for the construction of capacity for it in said Imperial Dam and All-American Canal for said 155 cubic feet of water per second, so that the City may transport through said Canal for the benefit of the inhabitants of the City, and those of other cities and communities in San Diego County who may hereafter become entitled with the consent of the Secretary, to use part of said stored water from Boulder Canyon Reservoir, under said contract of February 15, 1933, this contract to be in harmony with the provisions of said Imperial Contract; and

Article 5. WHEREAS, The Secretary has determined, upon engineering and economic considerations, that it is advisable to provide for the construction of said Imperial Dam and All-American Canal, and has determined that the revenues provided for by this contract are adequate in his judgment to insure payment of all

expenses of construction, operation and maintenance of the capacity in said Imperial Dam and All-American Canal to be constructed hereunder, in the manner provided in the reclamation law;

Article 6. NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

Construction by United States

Article 7. The United States will construct the Imperial Dam in the main stream of the Colorado River at the approximate location indicated on the map marked Exhibit "A" attached hereto and by this reference made a part hereof, and will also construct the Main (All American) Canal and Main (All American) Canal to Imperial Valley, the approximate location of said Canal to be as shown on the aforesaid Exhibit "A". Said Canal shall be so constructed as to provide a designed capacity of one hundred fifty-five (155) cubic feet of water per second, to be used by the City for the benefit of the inhabitants of said city and those of other cities and communities in San Diego County who may hereafter become entitled to use the same with the consent of the City and the Secretary, from and including the diversion and desilting works at said dam to the westerly end of that portion of the All-American Canal designated on said Exhibit "A" as "Main (All American) Canal" and "Main (All American) Canal to Imperial Valley". The ultimate cost to the City and the District of the Imperial Dam and All-American Canal shall in no event exceed the aggregate sum of thirty million dollars (\$30,000,000.00). Such cost shall include all expenses of whatsoever kind heretofore or hereafter incurred by the United States from the Reclamation Fund of the

Colorado River Dam fund in connection with, growing out of, or resulting from the construction of said Imperial Dam and All-American Canal, including but not limited to the cost of labor, materials, equipment, engineering, legal work, superintendence, administration, overhead, any and all costs arising from operation and maintenance of said Imperial Dam and All-American Canal prior to the time that said costs are assumed respectively by the City and the District, damage of all kinds and character and rights of way as hereinafter provided. The City hereby agrees to repay to the United States its share of all expenditures incurred on account of any and all damages due to the existence, operation or maintenance of the Imperial Dam and All-American Canal, the incurrence of which increases expenditures by the United States beyond the said sum of thirty million dollars (\$30,000,000.00). The City shall repay the same share of said expenditures as the share to be paid by the City under Article 10(b) hereof of the capital cost of the particular part of said works causing such damage. The United States will invoke all legal and valid reservations of rights-of-way under acts of Congress, or otherwise reserved or held by it, without cost to the City, except that the United States reserves the right where rights-of-way are thus acquired to reimburse the owners of such lands for the value of improvements which may be destroyed, and the City agrees that the United States may include such disbursements in the cost of the Imperial Dam and All-American Canal. If rights-of-way are required over an existing project of the Bureau of Reclamation, such sum or sums as may be necessary to reimburse the United States on account of the construction charges allocated to irrigable areas absorbed in such rights-of-way shall also be considered as a part of and be included with other costs

of the Imperial Dam and All-American Canal. The City agrees that the District may convey to the United States, unencumbered fee simple title to any and all lands now owned by it which, in the opinion of the Secretary, may be required for right-of-way purposes for these portions of the Imperial Dam and All-American Canal to be used in common by the City and the District, at the fair market value thereof, to be determined by the Secretary, such value to be considered (as to the City) as a part of and included with other costs of the Imperial Dam and All-American Canal. Where rights-of-way within the State of California are required for the construction of Imperial Dam and All-American Canal, and such rights-of-way are not reserved to the United States under acts of Congress, or otherwise, or the lands over which such rights-of-way are required are not then owned by the District, the City agrees that the District, upon request of the Secretary, may acquire title to any such lands required for such purposes, and convey unencumbered fee simple title thereto to the United States at the actual cost thereof to the District, subject to the approval of such cost by the Secretary.

Operation and Maintenance of Common Works

Article 8. (a) Imperial Dam and All-American Canal designated on said Exhibit "A" as "Imperial Dam", "Main (All American) Canal" and "Main (All-American) Canal to Imperial Valley" and Laguna Dam are herein styled "common works". Upon sixty (60) days' written notice from the Secretary of the completion of construction of the Imperial Dam and All-American Canal, or of any major unit thereof useful to the District and the City or either of them, as determined by the Secretary, whose determination thereof shall be final and binding upon the parties hereto, the District may assume the

care, operation and maintenance of said common works, or major units thereof, and thereafter the District may care for, operate and maintain the same in such manner that such works shall remain in as good and efficient condition and of equal capacity for the diversion, transportation and distribution of water as when received from the United States, reasonable wear and damage by the elements excepted. The United States may, from time to time, in the discretion of the Secretary, resume operation and maintenance of said Imperial Dam upon not less than sixty (60) days' written notice and require reassumption thereof by the District on like notice. During such times, after completion, as Imperial Dam is operated and maintained by the United States, the City shall on March first of each year advance to the United States its share of the estimated cost of operation and maintenance for the following twelve months, upon estimates furnished therefor on or before September first next preceding. Such share to be advanced by the City shall be in the proportion that the capacity provided for the City in common works above Lyphen Drop bears to the total capacity thereof.

(b) From and after the assumption by the District of operation and maintenance of said common works, or any major unit thereof of benefits to the City, the City shall bear such proportion of the cost of operation and maintenance (including repairs and replacements and any charges made by the United States under Article Nine (9) hereof) of each component part of said common works, as the capacity provided for the City in such component part bears to the total capacity thereof. The City agrees, expressly for the benefit of the District, to advance to the District on or before January first of each year its said proportionate share of the estimated

cost for that year of such operation and maintenance in accordance with a written notice to be issued to it by the District, provided that payment shall in no event be due until thirty (30) days after receipt of such notice. Prior to March first of each year the District shall provide the city with a written statement showing in detail the cost for the previous year for operation and maintenance of the works on account of which the City has made advances. Differences between actual costs and estimated costs shall be adjusted in the next succeeding notices. Upon request of the City, both the advance notice of estimated costs and the subsequent statement of actual costs for each year shall be reviewed by the Secretary and his determination of proper charges shall be final. Such review shall not change the due date for advance payments as herein provided and the cost of such review shall be borne equally by the District and the City. The District may at its option withhold delivery of water from the City until its proportionate share of the costs of operation and maintenance has been advanced or paid as in this article provided and until all sums due the District under Article 10(c) hereof have been paid.

In the event the United States fails to complete the works herein contemplated and the City fails to elect to make use of works theretofore partially or wholly constructed, the City shall be fully relieved of any and all responsibility for maintenance or operation or damage to person or property which may arise therefrom.

Keeping Diversion Dam, Main Canal and
Appurtenant Structures in Repair

Article 9. Except in case of emergency, no substantial change in any of the works to be constructed by the United States and transferred to the District under the provisions hereof or under

said Imperial Contract shall be made by the District, without first having had and obtained the written consent of the Secretary and the Secretary's opinion as to whether any change in any such works is or is not substantial shall be conclusive and binding upon the parties hereto. The District shall promptly make any and all repairs to and replacements of all said works transferred to it under the terms and conditions hereof or under said Imperial contract which, in the opinion of the Secretary, are deemed necessary for the proper operation and maintenance of such works. In case of neglect or failure of the District to make such repairs, the United States may, at its option, after reasonable notice to the District, cause such repairs to be made and charge the actual cost thereof, plus fifteen per centum (15%) to cover overhead and general expense, to the District. On or before September first of each calendar year the United States shall give written notice to the District of the amount expended by the United States for repairs under this article during the twelve-month period immediately preceding. Such cost, plus overhead and general expense as stated above, shall be repaid by the District on March first immediately succeeding.

Agreement by City to pay for Capacity Construction for it
by the United States

Article 10. (a) The total estimated cost of the Imperial Dam and All-American Canal as stated in Article 10 of the said Imperial Contract, is thirty-eight million, five hundred thousand dollars (\$38,500,000.00), of which not to exceed thirty million dollars (\$30,000,000.00) represents the total estimated cost of Imperial Dam, the Main (All American) Canal, and the Main (All American) Canal to Imperial Valley. The City agrees to pay the United States its share, as defined in sub-article (b) of this Article, of the actual total cost not exceeding thirty million dollars (\$30,000,000)

incurred by the United States on account of such works, subject, however, to the provisions of Article seven (7) hereof; provided, that should Congress and other Governmental financing authorities fail to make necessary appropriations or allocations of money to complete the work herein provided for, then the Secretary may, at such reasonable time as he may consider advisable, after Congress and such other Governmental authorities shall have failed for five (5) consecutive years to make the necessary appropriations or allocations which shall have been annually requested by the Secretary, give the City notice of the termination of work by the United States and furnish a statement of the amount actually expended by the United States thereon. Upon the receipt of such notice by the City, the City shall be given two (2) years from and after such receipt of notice to elect whether it will utilize said works thereafter constructed hereunder, or some particular part thereof. Such election on the part of the City shall be expressed by resolution of the City Council submitted to the electorate of the City for approval or rejection in the manner provided by law. If the City elects not to utilize, or fails within said two-year period to elect to utilize said works constructed hereunder, or some portion thereof, then the City shall have no further rights therein and no obligations therefor. If the City elects to utilize said works or a portion thereof, then the reasonable value to the City of the works so utilized, not exceeding the actual cost thereof to the United States, shall be paid by the City under the terms of this contract; the first payment to be due and payable on the first day of March following the first day of August next succeeding the final determination of the reasonable value to the City of such works, in case no further work is done by the City. Should the City elect to

complete the work contemplated by this contract, or some portion thereof, the first payment shall be due and payable on the first day of March following the first day of August next succeeding the date of final completion of the work by the City as determined by the Secretary. In determining the value of such works to the City there shall be taken into account, among other things, the method of financing required and cost of money, so that in no event shall all of the works contemplated by this contract cost the City more than they would have cost the City had they all been constructed by the United States under the terms of this contract. In the event of failure of the parties to agree as to the reasonable value to the City of the works which the City elects to use, the same shall be determined as provided in Article twenty-two (22) hereof.

(b) The amounts herein agreed to be paid by the City to the United States shall be in accordance with the following proportions, which proportions the Secretary hereby determines to be equitable and just, to wit:

(i) That proportion of the total cost of that part, of said common works above Uyphon Drop, excepting Laguna Dam, that the capacity provided for the City therein bears to the total capacity thereof less the capacity to be provided without cost to and for the Iam Project.

(ii) That proportion of the total cost of each component part of all said common works other than the part above Uyphon Drop, that the capacity provided for the City in such part of said works bears to the total capacity thereof.

(c) The City agrees to pay to the United States on the 31st day of December of each year commencing December 31, 1935, a portion (computed in the same manner as its share of costs of common works above Syphon Drop as agreed in Article 10 (b) (1) hereof) of each of the annual payments (together with interest required thereon) then or thereafter required to be made to the United States for a connection with Laguna Dam, under said contract dated October 23, 1918, and under Article sixteen (16) of said Imperial Contract.

The Secretary hereby determines that it is equitable and just that the City pay, and the City agrees, expressly for the benefit of the District, to pay the District the same proportion of the aggregate sum which shall have been paid by the District to the United States prior to December 31, 1935, for a connection with Laguna Dam, as aforesaid, as the proportion herein agreed to be paid by the City to the United States of payments hereafter to be made for said connection with Laguna Dam. The aggregate sum to be paid by the City to the District shall be divided into ten (10) equal installments, payable annually on March first of each year, commencing on or before the year 1939, with interest from date hereof on unpaid balance at the rate of six per centum (6%) per annum, payable March 1st, 1936, and annually thereafter. At its option, the City may at any time pay any amount on principal of said aggregate sum in advance of the due date and interest on the amount so paid shall thereupon cease.

Terms of Payment

Article 11. The amount herein agreed to be paid to the United States shall be due and payable in not more than thirty-eight (38) annual installments commencing with the calendar year next succeeding the year when notice of completion of all work provided for

herein is given to the City or under the provisions of Article 10(a) hereof upon termination of work through failure of Congress or other Governmental authorities to make necessary appropriations or allocations therefor. The first five (5) of such annual installments shall each be one percentum (1%) of the amount herein agreed to be paid to the United States; the next ten (10) of such installments shall each be two percentum (2%) of the amount herein agreed to be paid to the United States, the next twenty-one (21) of such installments shall each be three percentum (3%) of the amount herein agreed to be paid to the United States, and the remainder of such annual installments shall each be six percentum (6%) of the amount herein agreed to be paid to the United States. The sum payable annually as set forth above shall be divided into two (2) equal semi-annual payments, payable on March first and September first of each year; provided, however, that if notice of the completion of work is given to the City subsequent to August first of any year the first semi-annual installment of charges hereunder shall be due and payable on March first of the second succeeding year.

Operation and Maintenance Costs

Article 12. Each agency which hereafter contracts for capacity to be provided for it in Imperial Dam and All-American Canal and for which agency capacity is so provided shall bear such proportionate part of the cost of operation and maintenance (including repairs and replacements) of the component parts of Imperial Dam and All-American Canal and of the Laguna Dam as may be determined by the Secretary to be equitable and just, but not less than an amount in proportion to the total amount as are the relative capacities provided in each component part for such agency and for all other agencies, including the City. Each such Agency shall advance to the District operating the works provided to be used

in common by the District and the City and such agency on or before January first of each year, its proportionate share of the estimated cost for that year of operation and maintenance in accordance with a notice to be issued by the District, provided that payment shall in no event be due until thirty (30) days after receipt of notice. Prior to March 1st of each year the District shall provide each agency with a statement showing in detail the costs for the previous year for operation and maintenance of the works on account of which such agency has made advances. Differences between actual costs and estimated costs shall be adjusted in next succeeding notices. Upon request of any agency, both the advance notice of estimated costs and the subsequent statement of actual costs for each year shall be reviewed by the Secretary and his determination of proper charges shall be final. Such review shall not change the due date for advance payments as herein provided, and the cost of such review shall be borne equally by the requesting agency and the District. The District may, at its option, withhold the delivery of water from any agency until its proportionate share of the costs of operation and maintenance has been advanced or paid, as in this Article provided.

Power Possibilities

Article 13. The power possibilities on All-American Canal down to and including Syphon Drop with water carried for the benefit of the Yum Project as provided for in Article fourteen (14) hereof, are hereby reserved to the United States. Subject to this reservation and the participation by other agencies as provided for in Article seventeen (17) hereof, the City shall

have the privilege of utilizing by contract or otherwise, by means of the capacity to be provided for the City hereunder, such power possibilities, including those at or near Pilot Knob, as may exist upon said canal in proportion to its relative contribution or obligation toward the capital cost of said canal and appurtenant structures from and including the diversion works to the point where each respective power plant may be located; provided, that such privilege shall not interfere with the utilizing by the District of such power possibilities at or near Pilot Knob, by means of the capacity to be provided for the District in the All-American Canal from Syphon Drop to Pilot Knob, in excess of eight thousand five hundred (8,500) cubic feet of water per second. The net proceeds as hereinafter defined in Article twenty-seven (27) hereof, and as determined by the Secretary for each calendar year, from any power development which the City is hereunder authorized to make, shall be paid into the Colorado River Dam fund on March first of the next succeeding calendar year and be credited to the City on this contract until the City shall have paid thereby and/or otherwise an amount of money equivalent to that herein agreed to be paid to the United States. Thereafter such net power proceeds shall belong to the City. It is agreed that in the event the net power proceeds in any calendar year, creditable to the City, shall exceed the annual installment of charges payable under this contract during the then current calendar year, the excess of such net power proceeds shall be credited on the next succeeding unpaid installment to become due from the City under this contract.

Diversion and Delivery of Water for Yum Project

Article 14. The City hereby consents that there be

diverted at the Imperial Dam, and transported and delivered at Syphon Drop and/or such intermediate points as may be designated by the Secretary, the available water to which the Yuma Project (situated entirely within the United States and not exceeding in area 120,000 acres plus lands lying between the project levees and the Colorado River as such levees were located in 1931) is entitled, not exceeding two thousand (2,000) second-feet of water in the aggregate, or such part thereof as the Secretary may direct, for the use and benefit of said project, including the development of power at Syphon Drop, such water to be diverted, transported and delivered continuously in so far as reasonable diligence will permit; provided, however, that water shall not be diverted, transported, or delivered for the Yuma Project when the Secretary notifies the District that said project for any reason may not be entitled thereto; provided, further that there may be diverted, transported and delivered such water in excess of requirements for irrigation or potable purposes, as determined by the Secretary, on the Yuma Project as so limited, only ^{when} such water is not required by the City under the provisions of its said contract of February 15, 1933. The diversion, transportation and delivery of water for the Yuma Project as aforesaid shall be without expense to the United States or its successors in control of said project, as to capital investment required to provide facilities for such diversion and transportation of water except such checks, turnouts and other structures required for delivery from said canal.

Contract of October 23, 1918

Article 15. That certain contract between The United States of America and the District, bearing date of October 23, 1918, providing for a connection with Laguna Dam, having been terminated,

except as to the provisions of Article nine (9) thereof, by said Imperial Contract, the City hereby consents to such partial termination of said first mentioned contract. The City hereby consents that there be furnished to the United States or its successors in interest in the control, operation and maintenance of the Yuma Project, from any power development on the All-American Canal at or near Pilot Knob, up to but not to exceed four thousand horsepower of electrical energy for use by the agency in charge of project operations for irrigation and drainage pumping purposes and necessary incidental use on said Yuma Project, such power to be furnished at cost (including overhead and general expense) plus ten per cent; provided, however, that such power at or near Pilot Knob shall not be required to be furnished except at such times as all power feasible of development at Syphon Drop or developed elsewhere within a radius of forty (40) miles from the City of Yuma for the benefit of the Yuma Project is being used for project operations as in this article specified.

Refusal of water in case of default

Article 16. 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 the United States under this contract, or in the discretion of the Secretary to reduce deliveries in such proportion as the amount in default by the City bears to the total amount due. The United States further reserves the right to forthwith assume control of all or any part of the works to be constructed hereunder and to care for, operate and maintain the same, so long as the Secretary deems necessary or advisable, if, in his opinion, which shall be final and binding upon the

parties hereto, the City does not carry out the terms and conditions of this contract to their full extent and meaning. In such event, the City's pro rata share of the actual cost of such care, operation and maintenance by the United States shall be repaid to the United States, plus fifteen per centum (15%) to cover overhead and general expense, on March first of each year immediately succeeding the calendar year during which said works are operated and maintained by the United States. Nothing herein contained shall relieve the City of the obligation to pay in any event all installments and penalties provided in this contract.

Use of Works by the United States and Others

Article 17. The United States also reserves the right to, and the City agrees that it may, at any time prior to the transfer of constructed works to the District for operation and maintenance, increase the capacity of such works and contract for such increased capacity with other agencies for the delivery of water for use in the United States. Each other agencies shall have the privilege at any time of utilizing by contract or otherwise such power possibilities as may exist upon said canal in proportion to their respective contributions or obligations toward the capital cost of said canal and appurtenant structures from and including the diversion works to the point where each respective power plant may be located. In the event other agencies thus contract with the United States, each of such agencies shall assume such proportion of the total cost of said works to be used jointly by such agency and the City, including Laguna Dam, as the Secretary may determine to be equitable and just, but not less than the proportion that the capacity provided for such agency in such works bears to the total capacity thereof (except in that part thereof above Syphon Drop including Laguna Dam,

in which part the proportion which such other agency shall assume shall be not less than the proportion that the capacity provided for such agency therein bears to the total capacity thereof less the capacity to be provided without cost to and for the Yuma Project) and the City's financial obligations under this Contract shall be adjusted accordingly. In no event shall construction costs chargeable to the City be increased by reason of additional capacity being provided for any such agency or agencies or contract or contracts having been made with same. Any such agency thus contracting shall also be required to reimburse the City in such amounts and at such times as the Secretary may determine to be equitable and just for payments theretofore made by the City for the right to use Laguna Dam.

Title to Remain in the United States

Article 18. Title to the aforesaid Imperial Dam and All-American Canal shall be and remain in the United States notwithstanding transfer of the care, operation and maintenance thereof to said District or other agency; provided, however, that the Secretary may, in his discretion, when repayment to the United States of all moneys advanced shall have been made, transfer the title to said main canal and appurtenant structures, except the diversion dam and the main canal and appurtenant structures down to and including Syphon Drop, to the District, the City or other agencies in the United States having a beneficial interest therein in proportion to their respective capital investments under such form of organization as may be acceptable to him.

Rules and Regulations

Article 19. 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 here-

under to or for the City and to other contractors. 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 thereof, or to protect the interests of the United States. The City hereby agrees that in the operation and maintenance of the Imperial Dam and All-American Canal, all such rules and regulations will be fully adhered to by it.

Inspection by the United States

Article 20. The secretary may cause to be made from time to time a reasonable inspection of the works constructed by the United States to the end that he may ascertain whether the terms of this and other contracts are being satisfactorily executed by the City and/or other agencies. Such proportion of the actual expense of such inspection in any calendar year, as shall be found by the Secretary to be equitable and just, shall be paid by the City to the United States on March first of each year immediately following the year in which such inspection is made, and upon statement to be furnished by the Secretary. The Secretary or his representative 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 work of the United States, and for all other purposes.

Access to Books and Records

Article 21. The officials or designated representatives of the City shall have full and free access to the books and records of the United States, so far as they relate to the matters covered by this contract, with the right at any time during office hours to make copies of and from the same; and the Secretary shall have the same right in respect of the books and records of the City.

Disputes or Disagreements

Article 22. Disputes or disagreements as to the interpretation or performance of the provisions of this contract, except as otherwise provided herein, 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 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 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.

Interest and Penalties

Article 23. No interest shall be charged on any installments of charges due from the City hereunder except that on all such installments or any part thereof, which may remain unpaid by the City to the United States after the same become due, there shall be added to the amount unpaid a penalty of one-half of one per centum (1/2%) and a like penalty of one-half of one per centum (1/2%) of the amount unpaid shall be added on the first day of each month thereafter so long as such default shall continue.

Agreement Subject to Colorado River Compact

Article 24. 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, suggesting 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.

Application of Reclamation Law

Article 25. Except as provided by the Boulder Canyon Project Act, the reclamation law shall govern the construction, operation and maintenance of the works to be constructed hereunder.

Contract to be Authorized by Election of Electors of City

Article 26. The execution of this contract by the City shall be authorized by the vote of two-thirds of the qualified electors of the City voting at an election to be held for that purpose, assenting that the City incur the indebtedness and liability of this contract, and authorizing and directing the City Council to levy annually a tax sufficient to provide for the payment to the United States each year when due each and every of the annual obligations of the City under this contract, or any portion thereof not paid from revenues derived from other sources. The City shall without delay and at its own cost and expense furnish the United States for its files, copies of all proceedings relating to the election upon this contract, which said copies shall be properly certified by the City Clerk of The City of San Diego.

Method of Determining Net Power Proceeds

Article 27. In determining the net proceeds for each calendar year from any power development which the City is hereunder authorized to make, on the All-American Canal, to be paid into the Colorado River Dam fund as provided in Article thirteen (13) hereof, there shall be taken into consideration all items of cost of production of power, including but not necessarily limited to amortization of and

and interest on capital investment in power development, replacements, improvements, and operation and maintenance, if any. Any other proper factor of cost not here expressly enumerated may be taken into account in determining the net proceeds.

Contract subject to Appropriations

Article 28. This contract is subject to appropriations or allocations being made by Congress or other Governmental financing authority 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. If more than three years elapse after this contract becomes effective and before appropriations or allocations are available to permit the United States to make expenditures hereunder, the City may, at its option, upon giving sixty (60) days' written notice to the Secretary, cancel this contract. Such option shall be expressed by vote of the electors of the City with the same formalities as required for the authorization of this contract.

Rights Reserved under Section 3737 Revised Statutes

Article 29. 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

Article 30. Nothing contained in this contract shall be construed as in any manner abridging, limiting or depriving the United States, the City, 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 provisions hereof or of a subsequent breach of such provision.

Interest in Contract not Transferable

Article 31. No interest in this contract is transferable by the City to any other party, without the consent of the United States, and any such attempted transfer shall cause this contract to become subject to annulment at the option of the United States.

Member of Congress Clause

Article 32. 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 Federal Emergency Administrator of Public Works and Secretary of the Interior.

Approved as to form
and legality:

THE CITY OF SAN DIEGO,

By Mayor.

Attest:

City Clerk.

(SEAL)

Ed Fletcher Papers

1870-1955

MSS.81

Box: 1 Folder: 5

General Correspondence - Allison, J.C.



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