

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES
AND THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT
FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE
CENTRAL ARIZONA PROJECT

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1. PARTIES

The parties to this contract, executed as of this 15th day of December, 1972, are the United States of America, acting through the Department of the Interior, and the Central Arizona Water Conservation District, a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona.

2. AUTHORITIES

This contract is made pursuant to:

2.1 Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof and supplementary thereto.

2.2 Boulder Canyon Project Act, approved December 21, 1923, 45 Stat. 1057, a supplement to the Federal Reclamation Laws.

2.3 Reclamation Project Act of 1939, approved August 4, 1939, 53 Stat. 1187, as amended.

2.4 Colorado River Basin Project Act, approved September 30, 1968, 82 Stat. 885, a supplement to the Federal Reclamation Laws.

2.5 Arizona Revised Statutes, §§ 45-2601 et seq.

1 3. RECITALS

2 3.1 The Colorado River Basin Project Act provides, among
3 other things, that for the purposes of furnishing irrigation water
4 and municipal and industrial water supplies to water-deficient areas
5 in Arizona and western New Mexico through direct diversion or exchange
6 of water, control of floods, conservation and development of fish and
7 wildlife resources, enhancement of recreation opportunities, and
8 for other purposes, the Secretary of the Interior shall construct,
9 operate, and maintain the Central Arizona Project, consisting of the
10 principal works hereinafter described in Article 6.3.

11 3.2 Pursuant to the provisions of Arizona Revised Statutes,
12 §§ 45-2601 et seq., the Central Arizona Water Conservation District has
13 been organized with the power to enter into a contract or contracts
14 with the Secretary of the Interior to accomplish the purposes of
15 Arizona Revised Statutes, §§ 45-2601 et seq.

16 4. ARTICLES OF AGREEMENT

17 NOW, THEREFORE, in consideration of the mutual and dependent
18 stipulations and covenants herein contained, it is agreed by and between
19 the parties hereto as follows:

20 5. DEFINITIONS

21 When used herein, unless otherwise distinctly expressed, or
22 manifestly incompatible with the intent hereof, the terms:

1 5.1 "Federal Reclamation Laws" or "Reclamation Laws" shall
2 mean the Act of June 17, 1902, 32 Stat. 388, and all acts amendatory
3 thereof or supplementary thereto.

4 5.2 "Basin Project Act" shall mean the Colorado River Basin
5 Project Act, 82 Stat. 885, dated September 30, 1968, which is a
6 supplement to the Federal Reclamation Laws.

7 5.3 "Secretary" shall mean the Secretary of the Interior of
8 the United States.

9 5.4 "Contracting Officer" shall mean the Secretary or his
10 authorized designee acting in his behalf.

11 5.5 "Contractor" shall mean the Central Arizona Water
12 Conservation District, organized pursuant to Arizona Revised Statutes,
13 §§ 45-2601 et seq.

14 5.6 "Service area" shall mean the area now included within
15 the Central Arizona Water Conservation District, consisting of Maricopa,
16 Pinal, and Pima Counties of Arizona and such other counties as may
17 hereafter become part of the District, exclusive of any Indian reservation
18 land lying wholly or partly within said Counties.

19 5.7 "Subcontractor" shall mean any irrigation district,
20 municipality, individual, or any entity which enters into a water
21 service contract, water delivery contract, or water exchange contract
22 with the United States and the Contractor in furtherance of the
23 provisions of the Basin Project Act.

1 5.8 "Central Arizona Project" or "project" shall mean the
2 project and works authorized by Section 301(a) of the Basin Project
3 Act and constructed by the United States pursuant to the provisions
4 of said Act and this contract.

5 5.9 "Project works" shall mean the principal works described
6 in Section 301(a) of the Basin Project Act, and appurtenances thereto,
7 or as modified pursuant to Article 6.4 hereof, together with lands,
8 interests in lands, and rights-of-way for such works and appurtenances.

9 5.10 "Separate feature of the project" shall mean
10 (a) Hooker Dam, (b) Charleston Dam and San Pedro Aqueduct, or (c) the
11 remaining principal works of the project listed in Subarticle 6.2(a)
12 which is hereinafter referred to as "main system." The main system
13 shall also include any other separate feature or features of the
14 project if constructed concurrently with the main system, as determined
15 by the Secretary.

16 5.11 "Water supply system" shall mean the facilities, including
17 appurtenant works, of the project necessary to divert and convey the
18 project water supply to Contractor's service area, but shall not include
19 any distribution works.

20 5.12 "Distribution works" shall mean those facilities
21 constructed or financed by the United States under the authorization
22 in Section 309(b) of the Basin Project Act for the primary purpose of

1 distributing the project water supply to irrigable lands in the
2 service area after said project water supply has been transported
3 or delivered through the water supply system.

4 5.13 "Agricultural water" or "irrigation water" shall mean project
5 water used primarily in the commercial production of agricultural crops
6 or livestock, including domestic use incidental thereto.

7 5.14 "Miscellaneous water" shall mean water delivered from
8 the project, or by exchange for project water, for recreational and
9 fish and wildlife purposes at other than project facilities and shall
10 be considered in the water and cost allocations to irrigation but shall
11 have a lesser priority of use than agricultural water.

12 5.15 "Municipal and industrial water," hereinafter referred
13 to as "M&I," shall mean water other than agricultural or miscellaneous
14 water delivered by means of the project works.

15 5.16 "Lands not having a recent irrigation history" shall
16 mean, except where otherwise determined by the Secretary for efficiency
17 of Subcontractor's operation, lands which the Secretary determines
18 were not irrigated during the period September 30, 1958, to
19 September 30, 1968.

20 5.17 "OM&R" shall mean the care, operation, maintenance, and
21 replacement of project works.
22

1 5.18 "Exchange water" shall mean Colorado River water made
2 available in exchange for or in replacement of existing supplies from
3 surface sources other than the mainstream of the Colorado River.

4 5.19 "Transferred works" shall mean the separate features of
5 the project or such facilities of the water supply system as to which
6 OM&R responsibility is transferred from the United States.

7 5.20 "Operating Agency" shall mean the entity or entities authorized
8 to assume OM&R responsibility of transferred works and approved for that
9 purpose by the Contracting Officer.

10 5.21 "Transfer notice" shall mean a written notice or notices,
11 numbered consecutively, which the Contracting Officer transmits to the
12 Operating Agency and which shall designate:

13 (a) the transferred works;

14 (b) items of equipment and supplies available for
15 transfer to the Operating Agency; and

16 (c) the date upon which such transfer will be effected.

17 5.22 "Gila River system waters" shall mean waters of the
18 Gila River and tributaries thereof east of the Yuma-Maricopa County line.

19 5.23 "Notice of completion" shall mean the notice or notices
20 which the Contracting Officer issues to Contractor to announce the
21 substantial completion of a separate feature of the project, or of
22

1 the entire project if constructed concurrently, thereby initiating
2 the payments therefor allocated to Contractor.

3 5.24 "Development Fund" shall mean the separate fund, known
4 as the Lower Colorado River Basin Development Fund, established in
5 the Treasury of the United States pursuant to Section 403(a) of the
6 Basin Project Act.

7 5.25 "Year" shall mean the period January 1 through the next
8 succeeding December 31.

9 5.26 "Contractor's Construction Cost Repayment Obligation,"
10 hereinafter referred to as "repayment obligation," shall mean the total
11 amount of all construction costs, OM&R costs during construction,
12 and interest on costs allocated to the M&I and power functions during
13 construction, of the Central Arizona Project, incurred therefor
14 and as determined by the United States and further described in
15 Article 6.2 hereof, excluding reimbursable costs allocated to fish
16 and wildlife and recreation, and costs associated with the delivery
17 of water to entities other than the Contractor or Subcontractors, and
18 which is determined by the Secretary, after consultation with the
19 Contractor, to be allocable to and repayable by the Contractor in
20 accordance with the provisions of the Basin Project Act and this contract.

21 5.27 "Separate feature repayment obligation" shall mean that
22 portion of the repayment obligation allocated by the Secretary to a
23 separate feature of the project.

1 5.28 "Return flow" shall mean all agricultural, M&I, and
2 miscellaneous waste water, seepage, and ground water which originates
3 or results from water contracted for from the Central Arizona Project.

4 5.29 "Project water" shall mean (a) Colorado River mainstream
5 water, (b) all other water conserved and developed by Central Arizona
6 Project dams and reservoirs and lawfully available for delivery by the
7 United States, and (c) return flow captured by the Secretary for
8 project use.

9 5.30 "Indian lands" shall mean the lands within any Indian
10 reservation for which an allocation of project water has or will be
11 made by the Secretary for delivery through project works.

12 5.31 "Navajo Project" shall mean the interests of the United States
13 in the Navajo Generating Station and the Transmission System, or any
14 replacement thereof, as authorized by Section 303 of the Basin Project
15 Act and as described in contracts entered into pursuant to that Act.

16 6. PROJECT CONSTRUCTION

17 6.1 Agreement of the United States. Subject to the terms and
18 conditions of this contract and within the limits of the funds made
19 available therefor by Congress, the United States will expend toward
20 the construction of the project, exclusive of interest costs during
21 construction, not to exceed \$832,180,000 based on 1967 cost estimates,
22

1 plus or minus such amounts, if any, as may be justified by reason of
2 ordinary fluctuations in construction costs as indicated by engineering
3 cost indices applicable to the types of construction involved therein,
4 or so much of such amount, as in the opinion of the Secretary, is
5 necessary to construct said project, whichever amount is the lesser.
6 The aforementioned amount includes the United States' costs of
7 participation in the Navajo Project.

8 6.2 Costs of Project.

9 (a) The estimated construction cost of \$832,180,000 for the
10 project, based upon 1967 prices, has been arrived at as follows:

11	<u>Main System</u>	<u>\$ 1,000's</u>
12	Granite Reef Division	407,740
13	Orme Division	42,340
14	Salt-Gila Division	47,170
15	Tucson Aqueduct (Colorado River source)	46,300
16	Buttes Dam	35,240
17	Navajo Project	<u>106,000</u>
18	Subtotal	684,790
19	<u>Other Separate Features</u>	
20	Hooker Dam	\$ 31,730
21	Charleston Dam & San Pedro	
22	Aqueduct (San Pedro River source)	<u>36,420</u>
	Subtotal	68,150

1	<u>Miscellaneous Features</u>	
2	*Gila River Division	5,250
3	Indian Distribution System	19,970
4	Colorado River Division	42,450
5	Drainage System	<u>11,570</u>
6	Subtotal	<u>79,240</u>
7	Total Project	<u>832,180</u>

8 *Note: Fish hatchery costs, some of which may be located on the
9 Colorado River.

10
11 Provided, however, That (i) the adjustment provisions of Subarticle 6.1
12 apply to the total construction costs of the project and not to
13 the costs of the individual line items set out in this Subarticle 6.2(a),
14 and (ii) in accordance with provisions of Article 6.4 herein, the
15 references to the individual line items set out in this Subarticle 6.2(a)
16 are not to be deemed a determination that each of the features
17 referred to in the individual line items will be constructed or that
18 costs will be incurred for each of said individual line items based upon
19 a percentage which the estimated costs for each individual line item
20 bears to the project's total estimated construction costs.

21 (b) The Central Arizona Project costs incurred by the
22 United States which are to be repaid by Contractor shall include

1 the share allocated to the Contractor of (i) construction costs of the
2 project, (ii) all expenses of whatsoever kind or nature heretofore
3 or hereafter incurred by the United States in connection with,
4 growing out of, or resulting from the construction, and (iii) the
5 OM&R during construction of project works. The aforementioned share of
6 allocated costs shall also include, but shall not be limited to,
7 interest during construction on costs allocated to the M&I and power
8 functions, the cost of labor, materials, equipment, engineering,
9 legal services, surveys, investigations, property, superintendence,
10 administration, overhead, general expenses, special services, damages
11 of all kinds and character, inspection, repair, and protection of
12 project works and water supply, and the costs of all lands, interests
13 in lands, and rights-of-way acquired by the United States for the
14 project, all as determined by the Secretary.

15 6.3 Principal Works of Project. The works and facilities to
16 be constructed under this contract shall consist of the following
17 principal works:

18 (a) A system of main conduits and canals, including a
19 main canal and pumping plants (Granite Reef Aqueduct and pumping
20 plants), for diverting and carrying water from Lake Havasu to Orme Dam
21 or suitable alternative, which system will have a capacity of
22 3,000 cubic feet per second;

1 (b) Orme Dam and Reservoir and pumping plants or suitable
2 alternative;

3 (c) Buttes Dam and Reservoir;

4 (d) Hooker Dam and Reservoir or suitable alternative which
5 shall be constructed in such manner as to give effect to the
6 provisions of Section 304(f) of the Basin Project Act;

7 (e) Charleston Dam and Reservoir and the San Pedro Aqueduct;

8 (f) Tucson aqueduct and pumping plants;

9 (g) Salt-Gila aqueducts;

10 (h) related canals, regulating facilities and electric
11 transmission facilities required for the operation of said principal
12 works;

13 (i) related water distribution and drainage works; and

14 (j) appurtenant works.

15 No works or facilities for the treatment of water are included in the
16 project works to be constructed by the United States. Nothing contained
17 herein shall be construed to indicate the order in which the
18 aforescribed works will be constructed.

19 6.4 Changes in Project Works. Should the Secretary, either
20 before or during construction, determine it to be in the best interests
21 of the project, he may, upon the completion of studies currently being
22 made or to be made, including land classifications, hydrological,

1 engineering, geological, sedimentation, water supply, and repayment
2 ability, and after consultation with the Contractor, change the location,
3 size, or capacity of any of the project works, or may eliminate
4 works, including one or more of the separate features other than the
5 main system, or add works to those described above, and the Secretary's
6 decision on such changes, eliminations, and additions shall be
7 conclusive.

8 6.5 Construction Conditions. The United States shall be under
9 no obligation to commence or, having commenced, to continue construction
10 of project works until transfer from the State of Arizona of such
11 State-owned lands or interests therein, in a form acceptable to the
12 Attorney General of the United States, as the Secretary determines
13 is necessary in the construction, operation, or maintenance of the
14 project.

15 6.6 Annual Work Program. During construction of the project
16 works the Contracting Officer will consult with the Contractor and/or
17 with any Subcontractor through or within whose service area project
18 works are to be constructed to achieve maximum coordination between
19 such construction program and the annual programs of any affected
20 Subcontractor. Within 30 days following the enactment by
21 Congress and Presidential approval of annual or supplementary
22

1 appropriation acts and the allotment of funds thereunder for continued
2 construction of the project, the United States will furnish the
3 Contractor with a notice and statement showing the proposed construction
4 program for the balance of the current fiscal year and for the following
5 fiscal year or years. If so requested in writing by the Contractor
6 within 30 days of its receipt of such notice, the Secretary
7 will consult with the Contractor and/or the affected Subcontractor
8 with respect to the proposed program. The action of the Contracting
9 Officer concerning the program after such consultation shall be final.

10 6.7 Inability of the United States to Complete Project on Basis
11 of Cost Estimates. If construction of the project works shall have
12 been commenced but, prior to completion, the Secretary determines
13 that the cost of constructing the project will exceed the maximum
14 amount to be expended therefor by the United States as provided for
15 in Article 6.1 hereof, the Secretary may after consultation with the
16 Contractor terminate construction and declare the obligations of the
17 United States hereunder with regard to completion of construction
18 of the project to have been fulfilled. If appropriations for the
19 continuance and/or completion of construction in amounts sufficient
20 in the opinion of the Secretary to complete said construction are
21 authorized by Congress and are available, the Secretary shall consult
22 with the Contractor and shall make continuation of construction

1 contingent upon the execution of an amendatory contract with the
2 Contractor wherein the Contractor's maximum repayment obligation is
3 increased so as to cover the increased reimbursable costs as determined
4 by the Secretary; Provided, however, That the Contractor shall not utilize
5 any part of the completed or unfinished project facilities in
6 the absence of written agreement with the Secretary for reimbursement
7 therefor.

8 7. PROJECT OPERATION, MAINTENANCE, AND REPLACEMENT

9 7.1 Operation and Maintenance and Water Deliveries by the
10 United States Prior to Completion of Construction. Prior to completion
11 of project works by the United States, as determined and announced
12 to the Contractor in writing by the Secretary, the United States will
13 operate and maintain said project facilities. The cost of said OM&R
14 allocated to the Contractor shall be included in the Contractor's
15 repayment obligation; Provided, however, That said OM&R cost shall
16 not be included within the project cost ceiling set out in Article 6.1
17 hereof. During the aforesaid period, project water, if available,
18 may be disposed of by the Secretary at charges which the Secretary
19 determines to be appropriate; Provided, however, That to the extent
20 deemed feasible by the Secretary, preference will be given to
21 Subcontractors and Indian lands. Payment for water shall be made in
22 advance by the water user. The places of measurement and delivery of
23 said water shall be established by the Secretary after consultation

1 with the Contractor. The proceeds accruing from the disposal of such
2 water shall be credited to the Development Fund and applied toward
3 the costs of the project as determined by the Secretary.

4 7.2 Operation and Maintenance and Water Deliveries after
5 Completion of Construction. Upon completion of construction of a
6 separate feature of the project and upon completion of construction
7 of the project, the United States shall operate and maintain the
8 project and shall make water available to water users therefrom until
9 such time as the United States transfers OM&R responsibility
10 to the Operating Agency pursuant to a contract therefor to be entered
11 into.

12 8. DELIVERY OF WATER:

13 8.1 Obligation of United States. Subject to the terms, conditions,
14 and provisions set forth herein, the United States will deliver project
15 water to Contractor and during such periods as it operates and maintains
16 the water supply system the United States will also transport and
17 deliver said water to the Subcontractors. After transfer of OM&R the
18 United States will make deliveries of Colorado River water to the
19 Operating Agency; deliveries of other project waters will be made
20 pursuant to rules and regulations issued by the Secretary.

21 8.2 Term of Contract. Subject to the terms, conditions, and
22 provisions set forth herein, this contract is for permanent service.

1 8.3 Conditions Relating to Delivery.

2 (a) The obligation of the United States to deliver water
3 under this contract is subject to:

- 4 (1) The availability of such water for use in Arizona
5 under the provisions of the Colorado River Compact,
6 executed November 24, 1922; the Boulder Canyon
7 Project Act, 45 Stat. 1057, dated December 21,
8 1928; the Colorado River Basin Project Act, dated
9 September 30, 1968, 82 Stat. 885; the contract
10 between the United States and the State of Arizona,
11 dated February 9, 1944; the Opinion of the
12 Supreme Court of the United States in the case
13 of Arizona v. California et al., 373 U.S. 546,
14 rendered June 3, 1963; and the March 9, 1964,
15 Decree of that Court in said case, 376 U.S. 340,
16 as now issued or hereafter modified.
- 17 (ii) Executive A, Seventy-eighth Congress, Second Session,
18 a treaty between the United States of America and
19 the United Mexican States, signed at Washington
20 on February 3, 1944, relating to the utilization
21 of the waters of the Colorado River and Tijuana River
22 and of the Rio Grande from Fort Quitman, Texas, to

1 the Gulf of Mexico, and Executive H,
2 Seventy-eighth Congress, Second Session, a
3 protocol signed at Washington on November 14,
4 1944, supplementary to the Treaty, all hereinafter
5 referred to as the Mexican Water Treaty.

6 (iii) The express understanding and agreement by the
7 Contractor that this contract is subject to
8 the condition that Hoover Dam and Lake Mead shall
9 be used: first, for river regulation, improvement
10 of navigation, and flood control; second, for
11 irrigation and domestic uses and satisfaction of
12 present perfected rights in pursuance of Article VIII
13 of the Colorado River Compact approved by
14 Section 13(a) of the Boulder Canyon Project Act;
15 and third, for power; and furthermore, that
16 this contract is made upon the express condition
17 and with the express covenant that all rights
18 hereunder shall be subject to and controlled by the
19 Colorado River Compact and that the United States
20 and the Contractor shall observe and be subject
21 to and controlled by said Colorado River Compact
22 and Boulder Canyon Project Act in the construction,

1 management, and operation of Hoover Dam,
2 Lake Mead, canals and other works, and the
3 storage, diversion, delivery, and use of water
4 to be delivered to Contractor hereunder.

5 (iv) The right of the United States temporarily
6 to discontinue or reduce the amount of water to
7 be delivered hereunder whenever such discontinuance
8 or reduction is made necessary for purposes of
9 investigations, inspections, replacements,
10 maintenance, or repairs to any works whatsoever
11 affecting, utilized or, in the opinion of the
12 Secretary, necessary for delivery of water hereunder,
13 it being understood that so far as feasible the
14 United States will (1) do so during periods of low
15 water demands and (2) give reasonable notice in
16 advance of such temporary discontinuance or
17 reduction.

18 (b) Delivery of Colorado River water by the United States
19 under this contract shall be charged to the State of Arizona's
20 apportionment under the aforementioned Supreme Court Decree of
21 March 9, 1964, in Arizona v. California and will discharge to that
22 extent the obligation of the United States to deliver water under

1 the aforementioned contract between the United States and the State of
2 Arizona, dated February 9, 1944.

3 8.4 Delivery Points. Colorado River water to be furnished to the
4 Contractor pursuant to this contract will be delivered by the
5 United States in the Colorado River at the point of diversion
6 from Lake Havasu where the intake structures of the pumping plant
7 are constructed. Gila River system waters will be delivered to the
8 Contractor at Charleston, Buttes, and Orme Dams. Delivery points for
9 return flow will be determined by the Contracting Officer after
10 consultation with the Contractor and/or the Subcontractor therefor.

11 8.5 Measurement.

12 (a) The quantity of Colorado River water pumped from
13 Lake Havasu for the project shall be measured by means of measuring
14 devices to be installed as part of the project works. If, for
15 any reason, in the opinion of the Secretary, said measuring devices
16 shall fail to operate satisfactorily, the Secretary will, from the
17 best information available, estimate the amount of water delivered
18 to the Contractor.

19 (b) Deliveries of project water to the various
20 Subcontractors shall be measured by means of measuring devices to
21 be installed as part of the project works at the points along the
22 various aqueducts at which such water may be diverted for each of

1 said Subcontractors, and/or at the points in the various reservoirs
2 formed by the dams constructed as part of the project works at which
3 such water may be diverted for Subcontractors and/or at the
4 points where return flow may be delivered. These points of measurement
5 will be established by the Secretary after consultation with
6 Contractor and the affected Subcontractor. If, for any reason, in
7 the opinion of the Secretary, said measuring devices shall fail to
8 operate satisfactorily, the Secretary will, from the best information
9 available and after consultation with the Contractor and the
10 affected Subcontractor, estimate the amount of water delivered to
11 each Subcontractor. The Secretary shall at all times have access
12 over any lands and rights-of-way of a Subcontractor for the purpose of
13 inspecting and checking said measuring devices.

14 8.6 Responsibility for Distribution of Water after Leaving
15 Water Supply System. Whether or not the United States operates and
16 maintains the project facilities, the United States shall not be
17 responsible for the control, carriage, handling, use, disposal, or
18 distribution of water after said water has been diverted from the
19 water supply system. At such time as the Operating Agency assumes
20 responsibility for the OM&R of project works, the responsibility
21 for diversion, carriage, and transportation of the water through the
22 water supply system shall be the sole responsibility of the

1 Operating Agency. Responsibility for distribution of water beyond
2 the water supply system shall be that of the Subcontractors to whom
3 said water is delivered from the water supply system. Nor shall the
4 United States, its officers, agents, and employees, be liable for
5 damage or claim of damage of any nature whatsoever for which there
6 is legal responsibility arising out of or connected with the control,
7 carriage, handling, use, disposal, or distribution of such water,
8 and each Subcontractor shall hold the United States, its officers,
9 agents, and employees, harmless from any and all such claims.

10 8.7 Quantity of Water to be Delivered.

11 (a) The Secretary reserves the right to determine that
12 quantity of Colorado River water to be released each year from
13 Lake Mead for use by the Central Arizona Project pursuant to
14 applicable law, which shall include the quantity of water which may
15 be allocated by the Secretary for use on Indian lands.

16 (b) The quantity of Colorado River water available
17 under this contract for project purposes shall not exceed the
18 quantity of water available to Arizona under the aforementioned
19 Supreme Court Decree in Arizona v. California and in Arizona's water
20 delivery contract with the United States after first providing
21 for satisfaction of:
22

1 (i) present perfected rights and perfected rights
2 described in Article II(D) of the Decree and the
3 rights of other Federal reservations established
4 prior to September 30, 1968; Provided, however,
5 That the quantities of Colorado River water
6 reserved to satisfy the aforesaid rights shall not,
7 except as provided in said Decree, be reduced under
8 any circumstances or for any reason whatsoever
9 including, without limitation, a temporary use
10 permitted by the Secretary by other water users
11 in Arizona, California, or Nevada, of water
12 reserved pursuant to the foregoing but not
13 needed during any calendar year; And provided
14 further, That no rights to the recurrent use of
15 such water shall accrue by reason of said temporary
16 use; and

17 (ii) the quantities of water provided for in all
18 water delivery contracts between the United States
19 and water users in Arizona as of September 30, 1968.

20 (c) The quantity of Colorado River water available under
21 this contract for project purposes, including water for use on Indian
22

1 lands shall have the same priority as to delivery as the quantities of
2 Colorado River water delivered pursuant to:

- 3 (i) contracts between the United States and water
4 users in Arizona entered into heretofore but
5 subsequent to September 30, 1968; Provided, however,
6 That the Contractor shall hold the United States,
7 its officers, agents, employees, and successors
8 or assigns, harmless as to any and all claims
9 for damages to persons or to property direct or
10 indirect and of whatever nature, arising out of
11 or which may in any manner be connected with the
12 operation and/or effect of this Subarticle; and
- 13 (ii) water delivery contracts and arrangements entered
14 into subsequent to the date of this contract
15 for use on Federal, State, or privately owned
16 lands along the Colorado River between the Secretary
17 and the Federal and/or State agencies charged with
18 the administration of said lands and/or the owners
19 thereof.

1 8.8 Subcontracts.

2 (a) The United States shall be a party to subcontracts.

3 (b) The Secretary and the Contractor shall require in each
4 subcontract that:

- 5 (1) unless and until otherwise provided by Congress,
6 water from the Central Arizona Project shall not
7 be made available directly or indirectly for
8 the irrigation of lands not having a recent
9 irrigation history, as determined by the Secretary,
10 except in the case of Indian lands, national
11 wildlife refuges, and, with the approval of the
12 Secretary, State-administered wildlife management
13 areas;
14 (ii) there be in effect measures, adequate in the
15 judgment of the Secretary and the Contractor,
16 to control expansion of irrigation from aquifers
17 affected by irrigation in the contract service
18 area and to reduce pumping of ground water in the
19 agricultural Subcontractors' service areas by the
20 amount of project water received by said agricultural
21 Subcontractors.
22

- 1 (iii) the canals and distribution systems through which
2 water is conveyed after its delivery to the
3 Subcontractors shall be provided and maintained
4 with linings adequate in the Secretary's judgment
5 to prevent excessive conveyance losses;
- 6 (iv) neither the Secretary, the Contractor nor any
7 Subcontractor shall pump or permit others to pump
8 ground water from within the exterior boundaries of
9 the service area of a Subcontractor receiving
10 water from the Central Arizona Project for any use
11 outside of said Subcontractor's service area unless
12 the Secretary, the Contractor, and such Subcontractor
13 shall agree, or shall have previously agreed,
14 that a surplus of ground water exists and that
15 drainage is or was required.
- 16 (v) neither the Contractor nor any Subcontractor shall
17 sell or otherwise dispose of or permit the sale
18 or other disposition of any project water, including
19 return flows, for use outside the Contractor's
20 service area;
- 21 (vi) irrigation water made available thereunder may
22 be made available by the Secretary for M&I

1 purposes if and to the extent that such water
2 is no longer required by the Subcontractor for irrigation
3 purposes and shall be made available in all cases
4 where lands receiving project water have been
5 converted to municipal or industrial use; Provided,
6 however, That Subcontracts effectuating such
7 transfers are subject to the approval of the
8 Secretary and the Contractor, which approval shall
9 not be withheld unreasonably; And provided further,
10 That it shall be deemed unreasonable for the
11 Secretary or the Contractor to withhold such
12 approval on the basis that the right to convert
13 from irrigation to M&I use for a specific development
14 could better be exercised in some other Subcontractor's
15 service area. The water so converted from
16 irrigation to M&I purposes will be delivered with
17 the same priority and at the same rate per acre-foot
18 as other M&I water. Likewise, subcontracts for
19 furnishing water for M&I purposes shall provide
20 that, if water to be delivered thereunder is not
21 presently required for such purposes, such water
22 may be made available by the Secretary to other
23 users; Provided, further, That the Subcontractor

1 shall be relieved of its payment obligation under
2 its Subcontract only to the extent of the amount
3 paid by such other users.

- 4 (vii) the acreage limitation provisions of the Reclamation
5 Laws shall apply, except in the case of Indian
6 lands, to irrigable lands held in private ownership
7 by any one owner in excess of 160 irrigable acres
8 within the Contractor's service area which are
9 furnished project water through project facilities for
10 irrigation use; Provided, however, That in the
11 event the Congress of the United States repeals or
12 amends the excess lands provisions of the Federal
13 Reclamation Laws, the United States agrees, at the
14 option of the Contractor and/or Subcontractor,
15 to negotiate amendments of appropriate articles of
16 the subcontract, consistent with the provisions
17 of such repeal or amendment.
- 18 (viii) except as specifically provided therein, it shall
19 be subject to the provisions of this contract
20 which shall be controlling in the event of any
21 inconsistency between this contract and any subcontract.
22

1 (ix) the Subcontractor shall levy all necessary
2 assessments, tolls, and other charges and shall use
3 all of the authority and resources available
4 to the Subcontractor to collect the same in order
5 that the Subcontractor may meet its obligations
6 thereunder to make in full all payments required
7 under said subcontract on or before the date
8 such payments become due and to meet other
9 obligations under the subcontracts.

10 (x) the Subcontractor establish, maintain, and provide
11 the United States and the Contractor with land,
12 water use, and crop census records.

13 8.9 Shortages. As provided in Section 301(b) of the Basin
14 Project Act, Article II(B)(3) of the Decree of the Supreme Court of
15 the United States in Arizona v. California, 376 U.S. 340, dated
16 March 9, 1964, shall be so administered that in any year in which, as
17 determined by the Secretary, there is insufficient mainstream
18 Colorado River water available for release to satisfy the annual
19 consumptive use of 7,500,000 acre-feet in Arizona, California, and
20 Nevada, diversions from the mainstream of the Colorado River for
21 the Central Arizona Project and for other uses in Arizona under
22 contracts or other agreements with the United States executed

1 subsequent to September 30, 1968, shall be so limited as to assure
2 the availability of water in quantities sufficient to provide for
3 the aggregate annual consumptive use by holders of present perfected
4 rights, by other users in the State of California served under
5 contracts existing as of September 30, 1968, with the United States
6 by diversion works heretofore constructed, and by other Federal
7 reservations in California of 4,400,000 acre-feet of Colorado River
8 water, and by users of the same character in Arizona and Nevada. Water
9 users in the State of Nevada shall not be required to bear shortages
10 in any proportion greater than would have been imposed in the absence
11 of said Section 301(b), nor shall said Section affect the relative
12 priorities, among themselves, of water users in Arizona, California,
13 and Nevada which are senior to diversions for the Central Arizona
14 Project, or amend any provisions of said Decree. The aforesaid
15 limitation stated in Section 301(b) shall not apply so long as the
16 Secretary shall determine and proclaim that means are available and
17 in operation which augment the water supply of the Colorado River system
18 in such quantity as to make sufficient Colorado River mainstream
19 water available for release to satisfy annual consumptive use of
20 7,500,000 acre-feet in Arizona, California, and Nevada.

21 8.10 Rate of Diversions of Colorado River Water. Subject to

22 (a) the first proviso in Section 301(a) of the Basin Project Act,

23 (b) the provisions of Subarticle 10.6(a) hereof, and (c) the

1 provisions of Subarticle 8.7(a) hereof, any capacity in the Granite
2 Reef Aqueduct in excess of 2,500 cubic feet per second may be utilized
3 in the operations of the project so as to maximize project benefits;
4 Provided, however, That the use of such capacity shall not result
5 in the annual diversion of a quantity of water in excess of the
6 project's legal entitlement under the Basin Project Act.

7 8.11 Priority in Case of Shortage. Subject to the provisions of
8 Section 304(e) of the Basin Project Act, any water furnished through
9 project facilities shall, in the event of shortages, be reduced pro
10 rata until exhausted, first for miscellaneous uses and next for
11 agricultural uses, before water furnished for M&I uses is reduced.
12 Thereafter, water for M&I uses will be reduced pro rata among all M&I
13 water users. Each subcontract or other water delivery arrangement
14 entered into pursuant to this contract shall so provide. This article
15 shall not apply to Indian uses; Provided, however, That the relative
16 priorities between Indian and non-Indian uses shall be as determined
17 by the Secretary.

18 8.12 No Guarantee of Availability of Water. The United States
19 assumes no responsibility with respect to the quantity of water
20 available for delivery pursuant to this contract. In no event shall
21 the United States, its officers, agents, or employees, be liable for
22 any damages, direct or indirect, of whatsoever nature, arising out
23 of or in any way connected with any suspension or reduction in the
24 delivery of water pursuant to this contract or with any shortage

1 in the quantity of water available for delivery hereunder or to any
2 Subcontractor for any cause whatsoever including, but not limited to,
3 drought, delay in the construction of the Navajo Project, the failure
4 of the Navajo Project to be completed, or the lack of power for
5 pumping.

6 8.13 Secretarial Control of Return Flow.

7 (a) The Secretary reserves the right to capture all return
8 flow flowing from the exterior boundaries of the Contractor as a
9 source of supply and for distribution to and use of the Central Arizona
10 Project to the fullest extent practicable. The Secretary also
11 reserves the right to capture for project use return flows within the
12 boundaries of Contractor if in his judgment such return flow is not
13 being put to a beneficial use. Any Subcontractor may sell its return
14 flow; Provided, however, That such return flow may not be sold
15 for use outside the Contractor's exterior boundaries; And provided
16 further, That if the price received for such return flow is higher than
17 the price paid for project water, the amount of the excess price
18 shall be paid by such Subcontractor to the Contractor for application
19 against the Contractor's repayment obligation to the United States.

20 (b) Any return flow captured by the United States and
21 determined by the Secretary to be suitable and available for use on
22 lands within the service area and/or by any Subcontractor therein may

1 be delivered by the United States to a Subcontractor as a part of
2 the water supply for which the Subcontractor contracts hereunder and
3 such water shall be accounted and paid for pursuant to the provisions
4 hereof.

5 8.14 Water and Air Pollution Control. The Contractor and all
6 Subcontractors shall comply fully with all applicable Federal laws,
7 orders, and regulations, and the laws of the State of Arizona, all
8 as administered by appropriate authorities, concerning the pollution
9 of streams, reservoirs, ground water, or water courses with respect
10 to thermal pollution or the discharge of refuse, garbage, sewage
11 effluent, industrial waste, oil, mine tailings, mineral salts,
12 or other pollutants, and concerning the pollution of the air with respect
13 to radioactive materials or other pollutants.

14 8.15 Quality of Water. The operation and maintenance of
15 project facilities shall be performed in such manner as is practicable
16 to maintain the quality of raw water made available through such
17 facilities at the highest level reasonably attainable as determined by
18 the Contracting Officer. The United States does not warrant the
19 quality of water and is under no obligation to construct or furnish
20 water treatment facilities to maintain or better the quality of water.

21 8.16 Exchange Water. Where the Secretary determines that
22 a Subcontractor is physically able to receive Colorado River

1 mainstream water in exchange for or in replacement of existing
2 supplies of surface water from sources other than the Colorado River
3 to provide water supplies for users upstream from Orme and Buttes Dams,
4 the Secretary may require that said Subcontractor agree to accept said
5 mainstream water in exchange for or in replacement of said existing
6 supplies pursuant to the provisions of Section 304(d) of the
7 Basin Project Act.

8 8.17 Rights Reserved to the United States to Have Water Carried
9 by Project Facilities. As a condition to the construction of project
10 facilities and the delivery of water hereunder, the Contractor agrees
11 that all project facilities will be available for the diversion,
12 transportation, and carriage of water for Indian and non-Indian uses
13 pursuant to arrangements or contracts therefor entered into on their
14 behalf with the Secretary. In the event the responsibility for the
15 OM&R of project facilities is transferred to and assumed by the
16 Operating Agency, such transfer shall be subject to the condition that
17 the Operating Agency shall divert, transport, and carry such water for
18 such uses pursuant to the provisions of the aforesaid arrangements or
19 contracts; Provided, however, That the aforesaid arrangements or contracts
20 will include provisions for the payment of applicable construction costs
21 and of OM&R costs allocable to the delivery of water thereto based upon
22 the ratio obtained by dividing the estimated amount of project water

1 delivered to or to be made available thereunder to entities other than
2 the Contractor, the Subcontractors, and those entities in New Mexico to
3 whom project water will be made available from Hooker Dam by the
4 total amount of project water that will be available for
5 project use and that the Contractor will not be responsible for the
6 payment of said costs.

7 9. PAYMENT OF PROJECT COSTS ALLOCATED TO CONTRACTOR

8 9.1 Allocation of Construction Costs.

9 (a) Upon completion of the main system or other separate
10 feature the Secretary shall allocate the costs of construction as
11 provided in the Basin Project Act. The allocation will be made by
12 the separable costs-remaining benefits method.

13 (b) For repayment purposes the reimbursable cost allocated
14 to irrigation and M&I by the separable costs-remaining benefits method
15 will be combined and will hereinafter be termed the "water supply
16 allocation." When construction of the main system or other separate
17 feature is substantially complete and at the periodic intervals
18 specified in Subarticle 9.3(c), suballocation of the water supply
19 allocation will be made to the irrigation and M&I functions proportional
20 to the water estimated to be used for each purpose during the
21 repayment period. The cost thus suballocated to the irrigation
22 function will hereinafter be termed the "noninterest-bearing

1 allocation." The cost thus suballocated to the M&I function shall be
2 added to the cost allocated to the commercial power function, plus
3 interest during construction for each, and the sum will hereinafter be
4 termed the "interest-bearing allocation."

5 (c) During construction, simple interest at the rate of
6 3.342 percent per annum shall be charged on costs allocated to the
7 interest-bearing function as adjusted by the Secretary (i.e., net
8 disbursements reduced by contract holdbacks, revenues applied to
9 construction cost, and nonreimbursable expenses financed from
10 construction funds). The total amount of all interest thus accumulated
11 through the construction period prior to the date of completion of
12 the main system and other separate features of the project, as
13 established by announcement of the Contracting Officer, shall,
14 respectively, be added to and become part of the actual construction
15 cost of the main system and each separate feature of the project.
16 Interest during construction shall not accrue during any period in
17 which construction is deferred or postponed by the United States as a
18 result of a national emergency, all as determined by the Secretary,
19 if authority to forego such interest exists or is made available to
20 the Secretary.

21 9.2 Repayment Concepts.

22 (a) Costs suballocated to non-Indian irrigation water will
23 be repaid by the Subcontractors to the extent of their ability to pay.

1 (b) Costs allocated to commercial power and costs
2 suballocated to M&I water use shall be combined and repaid with
3 interest at a rate of 3.342 percent on the unpaid balance. Revenues
4 received from each function, available in accordance with the Basin
5 Project Act, shall be applied first toward retirement of the combined
6 obligation. After retirement of that obligation such revenues shall
7 be applied to assist irrigation revenues in retirement of the
8 noninterest-bearing allocation within the repayment period.

9 (c) Reimbursable costs allocated to recreation and fish
10 and wildlife are anticipated to be covered by a separate contract and
11 repaid by the beneficiaries thereof.

12 (d) Repayment of costs allocated to irrigation of Indian
13 lands shall be governed by the provisions of Section 402 of the
14 Basin Project Act.

15 9.3 Contractor's Construction Cost Repayment Obligation.

16 (a) The repayment obligation shall consist of the total
17 cost allocated to the water supply and power functions plus OM&R
18 during construction and interest during construction on costs
19 allocated to the M&I and power functions, but shall not include
20 costs allocated to fish and wildlife and recreation, and costs associated
21 with the delivery of water to entities other than the Contractor or
22 Subcontractors. Such entities shall include but not be limited to

1 Indian tribes and councils in central Arizona receiving project
2 water and the New Mexico recipients of water service from Hooker Dam.
3 The costs to be excluded shall be calculated as follows:

4 (i) Hooker Dam costs excluded from the repayment
5 obligation shall be determined by multiplying
6 the project costs allocated to the water supply
7 function by the ratio developed by dividing the
8 quantity of project water made available throughout
9 the repayment period to water users in Arizona
10 in exchange for water made available to users
11 in New Mexico from or by means of project
12 works, by the total quantity of Colorado River
13 water delivered by the project throughout the
14 repayment period of the main system; Provided,
15 however, That the quantity of exchange water will be
16 calculated as though exchanged throughout the
17 repayment period of the main system.

18 (ii) The amount of other project costs which shall
19 be excluded from the repayment obligation shall
20 be determined by multiplying the project costs
21 allocated to the water supply function by a
22 ratio developed by dividing the quantity of

1 project water made available throughout the
2 repayment period to entities other than the
3 Contractor, the Subcontractors, and those users
4 in New Mexico to whom water has been made available
5 through the construction of Hooker Dam by the
6 total quantity of project water.

7 (b) The Contracting Officer will notify the Contractor of
8 (i) its estimated repayment obligation when construction of the
9 main system or other separate feature is substantially complete and
10 (ii) the actual repayment obligation when the costs are determined
11 by the Secretary; Provided, however, That the actual repayment
12 obligation shall be limited to \$1,200,000,000. Prior to completion
13 of construction, the Contracting Officer may determine that the
14 Contractor's repayment obligation will exceed \$1,200,000,000. In
15 that event, the Contracting Officer shall consult with the Contractor
16 and continuation of construction will be contingent upon the
17 execution of an amendatory contract to cover the increased repayment
18 obligation.

19 (c) Annual percentages of the repayment obligation shall be
20 those set out in the following schedule or any revision thereof
21 mutually agreed upon:
22

	<u>Project or Separate Feature Year</u>	<u>Percent of Repayment Obligation (Annual)</u>
1		
2		
3	1-7	1.0
4	8-14	1.3
5	15-21	1.6
6	22-28	2.0
7	29-35	2.6
8	36-42	2.7
9	43-49	2.7
10	50	2.7*
11		<u>100</u>

9.4 Payment of Contractor's Construction Cost Repayment Obligation.

(a) The Contractor shall make annual payments to the United States, to be credited to the Lower Colorado River Basin Development Fund, which shall be sufficient, when combined with accruals from the other sources described in Section 403(f) of the Basin Project Act, to effect repayment of the repayment obligation within a period of not more than 50 years beginning with the year following substantial completion of the main system or any other separate feature. The Contractor's first payment shall be due on or before January 15 of the year following the year in which the Secretary announces the substantial completion of construction of the main system or each separate feature. Annual payments thereafter shall be due on or before January 15 of each following year. The repayment period provided for the main system and each other separate feature

*Approximate

1 may not be concurrent and may overlap depending upon the date of
2 completion of each.

3 (b) The Contractor agrees to make annual payments calculated
4 by the Secretary as follows:

5 (i) Calculate the annual obligation required by the
6 schedule in Subarticle 9.3(c) or any revision
7 thereof.

8 (ii) Add to (i) the annual interest, at 3.342 percent,
9 on the unpaid balance in the interest-bearing
10 allocation.

11 (iii) Subtract therefrom the revenues estimated to be
12 available from the Development Fund anticipating
13 a zero balance at the end of each year in the
14 revenues in the Development Fund referred to in
15 Section 403(f) of the Basin Project Act.

16 (iv) Make adjustments for differences between estimated
17 and actual revenues for the preceding year.

18 (c) On or before each December 15, beginning with December 15
19 of the year in which the Secretary notifies the Contractor of the
20 substantial completion of the project or separate feature thereof,
21 the Secretary will notify the Contractor of the amount of the annual
22 payment due on the following January 15, which has been determined by
23 the Secretary on the basis of the aforesaid calculation; Provided,

1 however, That on or before any July 1 during the repayment period, the
2 Contractor may notify the Contracting Officer in writing that
3 following the payment due on the next succeeding January 15, the
4 Contractor elects to make equal annual payments for the remaining
5 years of the then current period referred to in Subarticle 9.3(c) and
6 for each subsequent period thereafter under terms and conditions and
7 in amounts to be mutually agreed upon; Provided further, That in the
8 event the parties are unable to agree thereon, the Contractor shall
9 make annual payments in accordance with the provisions of
10 Subarticle 9.4(b) hereof.

11 (d) The Contractor may make additional payments on the
12 repayment obligation at any time; Provided, however, That all
13 interest accrued hereunder is paid at the same time, whereupon
14 appropriate adjustments in the schedule of future payments will be
15 made on a basis satisfactory to the Secretary, who shall as promptly
16 as possible give the Contractor written notice of the adjusted
17 repayment schedule.

18 (e) It is understood and agreed that the Contractor shall
19 be obligated for the foregoing payments and that, regardless of
20 the delinquency or default in payment of any charges due to the
21 Contractor from any Subcontractor, or a diminution in the water
22 supply available to the Contractor, or regardless of any other
23 reason, the Contractor shall complete payment of each separate feature

1 repayment obligation within a 50-year period beginning in the year
2 following the announcement by the Secretary of substantial completion
3 of each separate feature and of availability of water for delivery
4 therefrom.

5 9.5 Commercial Power Rates. The Secretary will, consistent
6 with applicable law, periodically review and provide for appropriate
7 adjustments in the rates established for the sales of power and
8 energy, revenues from which contribute to the Development Fund.

9 9.6 Other Costs Borne by the Contractor.

10 (a) In addition to the payments provided for in Article 9.4
11 hereof, the Contractor shall make advance payments for OM&R costs
12 incurred by the United States. The United States will furnish
13 the Contractor with an estimate in writing at least 6 months
14 prior to substantial completion of construction of the project, or
15 separate feature thereof, of the OM&R cost to the end of the then
16 current year, together with an estimate of such cost for the calendar
17 year immediately following. Within a reasonable time of the receipt
18 of said estimates, as determined by the Contracting Officer, the
19 Contractor shall advance to the United States the payments for the
20 estimated OM&R cost to the end of the then current year and without
21 further notice or demand shall on December 15 of the then current
22 year and on June 15 of the following year advance to the United States

1 in equal semiannual installments the Contractor's share of the
2 estimated cost, including supervision and administrative expense for
3 the OM&R of the completed project or separate feature thereof.
4 Advances of payments for subsequent years shall be made by the
5 Contractor to the United States on the basis of estimates to be
6 furnished by the United States on or before November 15 preceding
7 said subsequent year and the advances of said payments shall
8 be due and payable in equal semiannual payments on the following
9 December 15 and June 15. Said OM&R costs are the total annual OM&R
10 costs of the project allocated to the irrigation and M&I water supply
11 functions less (i) the costs described in Subarticle 9.6(c) hereof, and
12 (ii) an amount determined by multiplying the total of said annual
13 costs by the ratio obtained by dividing the estimated amount of
14 project water delivered to or to be made available in the subsequent
15 year to entities other than the Contractor, the Subcontractors,
16 and those entities in New Mexico to whom project water will be made
17 available from Hooker Dam, by the total amount of project water
18 estimated to be available for use in that year.

19 (b) Differences between actual OM&R costs and the
20 estimated costs shall be determined by the Contracting Officer and
21 shall be adjusted in next succeeding estimates; Provided, however,
22 That if in the opinion of the Contracting Officer the amounts advanced

1 by the Contractor for any year are likely to be insufficient to pay
2 the above-mentioned OM&R costs during such year, additional and
3 sufficient sums of money shall be paid forthwith by the Contractor
4 to the United States upon notice thereof and demand therefor by the
5 Contracting Officer; Provided further, That the United States will
6 give Contractor reasonable notice in advance of any such deficiency.

7 (c) The Contractor's obligation to pay said OM&R costs
8 of the project or separate feature thereof will be reduced to the
9 extent that project water is made available for use in New Mexico
10 following completion of Hooker Dam. Said reduction will be in the
11 proportion which the quantity of project water made available to
12 water users in Arizona, in exchange for Gila River system waters
13 made available to water users in New Mexico from or by means of
14 project works, bears to the total quantity of Colorado River water
15 estimated to be available to the project that year.

16 (d) During the Hoover Dam cost-repayment period, the
17 Contractor shall pay to the United States the sum of \$0.25 for each
18 acre-foot of water pumped from Lake Havasu for miscellaneous and M&I
19 purposes as determined by the Contracting Officer. The quantity of
20 water pumped for such purposes will be determined by the
21 Contracting Officer at the end of each calendar year and the Contractor
22

1 notified of the amount due by March 1 of each subsequent year.
2 Payment shall be due on May 1 following notification. Said payment
3 shall be credited to the Colorado River Dam Fund established by
4 Section 2 of the Boulder Canyon Project Act.

5 9.7 Repayment of Costs of Excess Capacity in Granite Reef
6 Aqueduct. The costs of providing any capacity in the Granite Reef
7 Aqueduct and pumping plants in excess of 2,500 cubic feet per second
8 shall be repaid by Contractor from funds available to Arizona pursuant
9 to the provisions of Section 403(f) of the Basin Project Act, or by
10 funds from sources other than the Development Fund.

11 9.8 Ad Valorem Taxes, Assessments, Tolls, and Other Charges.
12 Within the legal limits available to it, the Contractor shall levy
13 ad valorem taxes upon the taxable property within the service area
14 of the Contractor at rates determined necessary by the Contractor
15 to raise funds which, together with revenues from the sale of water
16 and with such financial assistance from the Development Fund as the
17 Secretary determines is available therefor, are sufficient to meet the
18 obligations of the Contractor to make in full all payments to the
19 United States on or before the date such payments become due and to meet
20 its other obligations under this contract.

21 9.9 Continuation of Payments After Project Payout. Following
22 repayment to the United States of the Contractor's repayment obligation,

1 the Contractor shall continue to make annual payments to the
2 United States to be credited to the Development Fund in amounts
3 equal to a rate per acre-foot for all water delivered to all
4 Subcontractors based on the total construction payments, exclusive of
5 interest, received by the United States from the Contractor, divided
6 by the total number of acre-feet of water delivered to all Subcontractors
7 during the repayment period of the project. In the event that no
8 augmentation project, as contemplated in the Basin Project Act, has been
9 authorized or is under active consideration by the Congress at the time
10 project construction costs have been repaid in full, payments under this
11 formula will not be required; Provided, however, That payments will
12 commence after repayment of project costs pursuant to the formula, or
13 any adjustment thereof agreed to by the parties, at such time as an
14 augmentation project is authorized by Congress and the costs thereof
15 allocated to the Contractor are determined by the Secretary.

16 9.10 Defaults.

17 (a) The Contractor shall pay a penalty on payments,
18 installments or charges which become delinquent, computed at the rate
19 of 1 percent per month on the amount of such delinquent payments,
20 installments, or charges from and after the date when the same become
21 due until paid: Provided, That no penalty shall be charged to the
22

1 Contractor unless such delinquency continues for more than 30 days
2 in which event the penalty shall accrue from the initial date of
3 delinquency.

4 (b) No water shall be furnished to the Contractor during
5 any period in which the Contractor may be in arrears more than
6 12 months in the payments to the United States required by
7 Article 9.4 hereof.

8 (c) All rights of action for breach of this contract are
9 reserved to the United States as provided in 41 U.S.C. §§ 15.

10 10. GENERAL PROVISIONS

11 10.1 Other Contracts. The Secretary reserves the right to
12 contract directly with other water using entities concerning water
13 supply through project facilities. In the event this occurs, the
14 provisions of Article 8.17 hereof shall be applicable.

15 10.2 Title to Project Works. Title to all water supply system
16 works and all project facilities constructed pursuant to this contract
17 shall be and remain in the United States until otherwise provided
18 by Congress.

19 10.3 Reserve Funds.

20 (a) Commencing with the first payment of the repayment
21 period and continuing thereafter the Contractor shall accumulate and
22 maintain a reserve fund which will be available for use in the

1 manner, for the purposes, and in the circumstances hereinafter
2 set forth. Such reserve fund shall consist of annual deposits by
3 the Contractor to a special account created by the Contractor, which
4 shall be available for the hereinafter stated purpose of
5 not less than \$100,000. Such annual deposits shall continue until
6 the amount in the reserve fund is not less than \$500,000. Expenditures
7 shall be made from such reserve fund only for meeting major
8 unforeseen extraordinary costs of OM&R, repair, and betterment of
9 project works, and for OM&R during periods of special stress, such
10 as may be caused by drought, hurricane, storms, or other like
11 emergencies. Whenever said reserve fund is reduced below
12 \$500,000 by expenditures therefrom it shall be restored
13 by the accumulation of annual deposits, in amounts computed on the
14 same basis as the original deposits, commencing with the next year
15 following that in which the fund is reduced below said amount. During
16 any period in which any project works are operated and maintained
17 by the United States, such fund shall be available for like use
18 by the United States.

19 (b) Within a reasonable time after notice from the
20 Contracting Officer but not earlier than 1 year following the
21 initiation of construction of the Central Arizona Project, the
22 Contractor shall accumulate and maintain a second reserve fund which

1 will be available for the purpose of assuring payment of future
2 obligations of the Contractor to the United States under this
3 contract. Such reserve fund shall consist of annual deposits by
4 the Contractor to a special account created by the Contractor for
5 the aforesaid purpose of not less than \$500,000. Such annual deposits
6 shall continue until the amount in the second reserve fund is not less
7 than \$5,000,000. Whenever said second reserve fund is reduced
8 below the aforesaid amount by expenditures therefrom for the
9 purpose for which it was established, it shall be restored by the
10 accumulation of annual deposits, in amounts computed on the same
11 basis as the original deposits, commencing with the next year
12 following that in which the fund is reduced below said amount.

13 (c) At the option of the Contractor, the reserve funds
14 may be invested to the extent permitted by law; Provided, however,
15 That such reserve funds may be made available within a reasonable
16 time to meet the expenses for the purposes for which they were
17 accumulated; Provided, That upon mutual agreement said funds and
18 the annual installments may be adjusted to reflect the addition,
19 deletion, or changes in project facilities and OM&R costs not
20 contemplated when this contract was executed.

1 10.4 Recreational Use of Water Facilities.

2 (a) The enhancement of recreational opportunities in
3 connection with the project works authorized pursuant to Title III
4 of the Basin Project Act shall be in accordance with the provisions
5 of the Federal Water Project Recreation Act, 79 Stat. 213, dated
6 July 9, 1965, except as provided in Subarticle 10.4(b) hereof.

7 (b) Recreational development at Orme Dam and Reservoir
8 shall be governed by the provisions of Section 302(d) of the Basin
9 Project Act.

10 10.5 Court Validation of Contract.

11 (a) Following execution of this contract by the parties
12 hereto the Contractor shall, without delay, file and prosecute to a
13 final judgment, in a court of competent jurisdiction, including any
14 appeal therefrom to the highest court of the State of Arizona, a
15 special proceeding for the judicial examination, approval, and
16 confirmation of the proceedings had for the organization of the
17 Contractor and the proceedings of the governing board of the Contractor
18 leading up to and the making of this contract and the validity of the
19 provisions thereof. This contract shall not be binding on the
20 United States until the proceedings had for the organization of the
21 Contractor, and for the proceedings of the governing board of the
22 Contractor leading up to and including the making of this contract

1 and the validity of the contract and each of its provisions have
2 been so confirmed by a court of competent jurisdiction or pending
3 appellate action if ground for appeal be laid. Nothing herein
4 contained shall require the Contractor to assume the responsibility
5 of prosecuting judicial review beyond the highest court of the
6 State of Arizona.

7 (b) This contract shall be indivisible for purposes of
8 validation and shall not be binding on the United States or the
9 Contractor unless validated pursuant to the provisions of
10 Subarticle 10.5(a) hereof in each and all of its terms and conditions.

11 (c) The Secretary may, and where required by law shall,
12 require that all subcontracts entered into by the United States and
13 the Contractor with a Subcontractor for a water supply through project
14 facilities be validated in the manner and on the terms and
15 conditions set out in Subarticle 10.5(a) hereof.

16 (d) The Contractor shall, without delay and at its own
17 cost and expense, record this contract in the Offices of the County
18 Recorders of Maricopa, Pinal, and Pima Counties and shall furnish
19 the United States, for its files, with copies of all proceedings
20 relating to the confirmation proceedings in connection therewith
21 which said copies shall be properly certified by the Clerk of
22 the Court in which confirmatory judgment is obtained.

1 10.6 Rules, Regulations, and Determinations.

2 (a) The Contracting Officer, after an opportunity has
3 been offered to the Contractor for consultation, shall have the
4 right to make rules and regulations consistent with the provisions
5 of this contract, the laws of the United States and the State of
6 Arizona, including, without limitation, rules and regulations
7 relative to maximizing project benefits from pumping from
8 Lake Havasu, the rate and schedule of pumping therefrom and the
9 rate and schedule of pumping at the Granite Reef pumping plants,
10 to add to or modify said rules and regulations as may be deemed
11 proper and necessary to carry out this contract, and to supply
12 necessary details of its administration which are not covered by
13 express provisions of this contract. The Contractor and each
14 Subcontractor shall observe such rules and regulations and each
15 subcontract shall so provide.

16 (b) Where the terms of this contract provide for action
17 to be based upon the opinion or determination of either party
18 to this contract, whether or not stated to be conclusive, said
19 terms shall not be construed as permitting such action to be
20 predicated upon arbitrary, capricious, or unreasonable opinions
21 or determinations. In the event that the Contractor questions
22 any factual determination made by the Contracting Officer, the

1 findings as to the facts shall be made by the Secretary only
2 after consultation with the Contractor and shall be conclusive
3 upon the parties.

4 10.7 Books, Records, and Reports. The Contractor shall
5 establish and maintain accounts and other books and records pertaining
6 to its financial transactions, changes of project works, and to other
7 matters pertaining to this contract or to subcontracts, as the
8 Contracting Officer may require. Reports thereon shall be furnished
9 to the Contracting Officer in such form and on such date or dates
10 as he may require. Subject to applicable Federal laws and regulations,
11 each party shall have the right during office hours to examine and
12 make copies of each other's books and records relating to matters
13 covered by this contract.

14 10.8 Notices. Any notice, demand, or request authorized or
15 required by this contract shall be deemed to have been given when
16 mailed, postage prepaid, or delivered to the Regional Director, Lower
17 Colorado Region, Bureau of Reclamation, Boulder City, Nevada 89005, on
18 behalf of the United States, and to the President, Central Arizona
19 Water Conservation District, P. O. Box 20966, Phoenix, Arizona 85036,
20 on behalf of the Contractor. The designation of the addressee
21 or the address may be changed by notice given in the same manner as
22 provided in this Article for other notices.

1 10.9 Contingent on Appropriation or Allotment of Funds. The
2 expenditure or advance of any money or the performance of any work
3 by the United States hereunder which may require appropriation
4 of money by the Congress or the allotment of funds shall be
5 contingent upon such appropriation or allotment being made. The
6 failure of the Congress to appropriate funds or the absence of any
7 allotment of funds shall not relieve the Contractor from any
8 obligations under this contract. No liability shall accrue to the
9 United States in case such funds are not appropriated or allotted.

10 10.10 Changes in Contractor's Organization. While this contract
11 is in effect, no change shall be made in the Contractor's organization,
12 by exclusion of lands, by dissolution, consolidation, merger or
13 otherwise, except upon the Contracting Officer's written consent;
14 Provided, however, That approval is hereby given to the inclusion
15 of other counties as part of Contractor's service area, except,
16 however, that the United States shall not be required, under this
17 contract, to construct project facilities to serve lands within
18 said additional counties.

19 10.11 Assignment Limited--Successors and Assigns Obligated.
20 The provisions of this contract shall apply to and bind the
21 successors and assigns of the parties hereto, but no assignment or
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1 transfer of this contract or any part or interest therein shall
2 be valid until approved by the Contracting Officer.

3 10.12 Judicial Remedies Not Foreclosed. Nothing herein shall
4 be construed (a) as depriving either party from pursuing and
5 prosecuting any remedy in any appropriate court of the United States
6 or the State of Arizona which would otherwise be available to
7 such parties even though provisions herein may declare that
8 determinations or decisions of the Secretary or other persons are
9 conclusive or (b) as depriving either party of any defense thereto
10 which would otherwise be available.

11 10.13 Equal Opportunity. During the performance of this
12 contract, the Contractor agrees as follows:

13 (a) The Contractor will not discriminate against any
14 employee or applicant for employment because of race, color, religion,
15 sex, or national origin. The Contractor will take affirmative action
16 to ensure that applicants are employed, and that employees are
17 treated during employment, without regard to their race, color,
18 religion, sex, or national origin. Such action shall include, but
19 not be limited to, the following: Employment, upgrading, demotion,
20 or transfer; recruitment or recruitment advertising; layoff or
21 termination; rates of pay or other forms of compensation; and
22 selection for training, including apprenticeship. The Contractor

1 agrees to post in conspicuous places; available to employees and
2 applicants for employment, notices to be provided by the
3 Contracting Officer setting forth the provisions of this
4 Equal Opportunity clause.

5 (b) The Contractor will, in all solicitations or
6 advertisements for employees placed by or on behalf of the Contractor,
7 state that all qualified applicants will receive consideration
8 for employment without regard to race, color, religion, sex, or
9 national origin.

10 (c) The Contractor will send to each labor union or
11 representative of workers with which it has a collective
12 bargaining agreement or other contract or understanding, a
13 notice, to be provided by the Contracting Officer, advising the
14 labor union or workers' representative of the Contractor's
15 commitments under this Equal Opportunity clause, and shall post
16 copies of the notice in conspicuous places available to employees
17 and applicants for employment.

18 (d) The Contractor will comply with all provisions of
19 Executive Order No. 11246 of September 24, 1965, as amended, and
20 of the rules, regulations, and relevant orders of the Secretary
21 of Labor.

1 (e) The Contractor will furnish all information and
2 reports required by said amended Executive Order and by the rules,
3 regulations, and orders of the Secretary of Labor, or pursuant
4 thereto, and will permit access to its books, records, and
5 accounts by the Contracting Officer and the Secretary of Labor
6 for purposes of investigation to ascertain compliance with such
7 rules, regulations, and orders.

8 (f) In the event of the Contractor's noncompliance with
9 the Equal Opportunity clause of this contract or with any of the
10 said rules, regulations, or orders, this contract may be canceled,
11 terminated, or suspended, in whole or in part, and the Contractor
12 may be declared ineligible for further Government contracts in
13 accordance with procedures authorized in said amended Executive Order,
14 and such other sanctions may be imposed and remedies invoked as
15 provided in said amended Executive Order, or by rule, regulation, or
16 order of the Secretary of Labor, or as otherwise provided by law.

17 (g) The Contractor will include the provisions of paragraphs
18 (a) through (g) in every subcontract or purchase order unless exempted
19 by rules, regulations, or orders of the Secretary of Labor issued
20 pursuant to Section 204 of said amended Executive Order, so that
21 such provisions will be binding upon each subcontractor or vendor.
22 The Contractor will take such action with respect to any subcontract

1 or purchase order as the Contracting Officer may direct as a means
2 of enforcing such provisions, including sanctions for noncompliance:
3 Provided, however, That in the event the Contractor becomes
4 involved in, or is threatened with, litigation with a subcontractor
5 or vendor as a result of such direction by the Contracting Officer,
6 the Contractor may request the United States to enter into such
7 litigation to protect the interests of the United States.

8 10.14 Title VI, Civil Rights Act of 1964.

9 (a) The Contractor agrees that it will comply with
10 Title VI of the Civil Rights Act of July 2, 1964, 78 Stat. 241,
11 and all requirements imposed by or pursuant to the Department of
12 the Interior Regulation (43 CFR 17) issued pursuant to that title,
13 to the end that, in accordance with Title VI of that Act and the
14 Regulation, no person in the United States shall, on the ground of
15 race, color, or national origin be excluded from participation in,
16 be denied the benefits of, or be otherwise subjected to discrimination
17 under any program or activity for which the Contractor receives
18 financial assistance from the United States and hereby gives
19 assurance that it will immediately take any measures to effectuate
20 this agreement.

21 (b) If any real property or structure thereon is provided
22 or improved with the aid of Federal financial assistance extended to

1 the Contractor by the United States, this assurance obligates the
2 Contractor, or in the case of any transfer of such property, any
3 transferee for the period during which the real property or structure
4 is used for a purpose involving the provision of similar services or
5 benefits. If any personal property is so provided, this assurance
6 obligates the Contractor for the period during which it retains
7 ownership or possession of the property. In all other cases, this
8 assurance obligates the Contractor for the period during which the
9 Federal financial assistance is extended to it by the United States.

10 (c) This assurance is given in consideration of and for
11 the purpose of obtaining any and all Federal grants, loans, contracts,
12 property, discounts, or other Federal financial assistance extended
13 after the date hereof to the Contractor by the United States,
14 including installment payments after such date on account of
15 arrangements for Federal financial assistance which were approved
16 before such date. The Contractor recognizes and agrees that such
17 Federal financial assistance will be extended in reliance on the
18 representations and agreements made in this assurance, and that
19 the United States shall reserve the right to seek judicial
20 enforcement of this assurance. This assurance is binding on the
21 Contractor, its successors, transferees, and assignees.
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