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FACTS

on the

WATER RIGHTS QUESTION

in the

CENTRAL VALLEY PROJECT

Compiled by the California Farm Bureau Federation

For the Information

of the

Citizens of California

TABLE OF CONTENTS

PREFACE

All issues, which affect general welfare, should, in our opinion, be settled on the basis of indisputable facts; not on the basis of appeals to emotion, prejudice, or bias.

Every intelligent and fair-minded person will, I am sure, subscribe to this thesis.

No State issue is more important at this time than the one involving the establishment of a sound, practical and workable water policy and program for California.

In fact, the establishment of such a policy for California will reflect itself in the establishment of a similar policy for the other Western States.

Thus, what is done in California, in this direction, becomes a national matter.

In our democracy, every person is entitled to his and her own opinion. This is as it should be.

However, opinions which are not based upon or implemented with accredited facts are merely opinions -- nothing more.

On the question of water rights — THE ALL-IMPORTANT QUESTION FACING CALIFORNIA — we have compiled the following pages of FACTS, from the sources as notated therein, upon which every citizen of California can base his and her own judgment as to what should be done.

We invite every citizen of the State to study most carefully the contents of this booklet.

Ray B. Wiser, President
California Farm Bureau Federation

Berkeley, California
March 11, 1948

C.F.B.F.
RESOLUTION NO. 22

Passed on Nov. 18, 1943
Adopted by House of Delegates

ACREAGE LIMITATIONS

The Central Valley Project was conceived and its construction authorized by Congress on the basis of need for the improvement of irrigation in the State of California, the restoration of navigation, the control of floods, the control of salinity encroachment, and secondly, the generation of electrical energy.

As most agricultural land in the great valleys of California is already highly developed under a system of irrigation, the waters to be supplied from the Project are primarily water for supplemental irrigation only, the replenishment of diminishing available surface and underground water resources and the distribution of augmented supplies to areas of need. Many vested water rights exist in the streams affected and many irrigators depend upon privately developed sources of water.

It is therefore the position of California Farm Bureau Federation that the Bureau of Reclamation in supplying water for irrigation purposes in California should not, as a condition or prerequisite to such use, attempt to enforce or be authorized to enforce any acreage restrictions or excess land limitations.

In our considered opinion, the attempted enforcement of any acreage restriction or excess land limitation in connection with this Project will be burdensome, economically unsound from the standpoint of production and individual livelihood and will be confiscatory of many existing land and water rights.

We, therefore, go on record as endorsing and sponsoring such legislative or other action as may be necessary in the immediate future to prevent the imposition of acreage restrictions or excess land limitations in connection with the operation of the Central Valley Project.

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C.F.B.F.
RESOLUTION NO. 5

Passed on November 1, 1946
Adopted by House of Delegates

WATER POLICY IN IRRIGATION DEVELOPMENTS

The California Farm Bureau Federation adopts the following water policy:

1. Existing water rights must be fully protected.

   a. We insist on rigid observance of state water laws and respect for established individual water rights as decreed by court or obtained through actual beneficial use. In the event a water supply is developed in excess of established water rights, preference shall be given in its application to the supplemental requirements of existing irrigated areas.

b. The Secretary of the Interior in reporting on the feasibility of an irrigation development, whether for new or supplemental water deliveries, should be required to furnish indisputable proof of a water supply adequate at all times in quality as well as quantity to supply such development without encroachment upon existing beneficial uses. The supplemental requirements of existing irrigated areas should be given priority over new developments.

c. We reaffirm the rule of the original reclamation law that water rights become appurtenant to the lands irrigated and call for its restoration and application in all cases.

2. There should be a revision of the acreage limitations in the reclamation law to adapt them to circumstances of particular cases, such as:

a. Local conditions and farming possibilities.

b. Supplemental nature of water supply.

c. Necessity of attracting ambitious farmers.

d. Facilitating improvement in living standards of rural people.

3. The Bureau of Reclamation has made an enviable record as a construction agency, and, except insofar as required by the reimbursement provisions of law, should confine its activities to that field. These reimbursement provisions are recognized as an essential feature of reclamation law and should be observed.

a. The Bureau of Reclamation should have no control over water rights or the water accruing under them except as incidental to the construction of project works and then only for a length of time specifically limited to the construction period, such right to be promptly terminated immediately upon the delivery of water.

b. Irrigation facilities, when reimbursement of construction costs is assured, should be turned over to water users at their option free and clear of all conditions.

c. The Bureau should have no power to place conditions on the deliveries of water to individual water users.

d. The Bureau should have no power to interfere in any way in the administration of a water user's distribution agency.

e. Power, as a by-product of the application of water to irrigation uses, should make the maximum possible contribution to the overall cost of the project.

4. Irrigation is the primary agricultural use of water in the West and storage works required for that purpose are of substantial service to power and flood control purposes. Irrigation projects should have maximum assistance from other purposes served by their works in reimbursing the costs of construction.

5. Irrigated acreages should be expanded only when and where required by

the needs of the country for food and fibre. The American Farm Bureau Federation is requested to obtain and furnish information on the need for additional farming acreages to meet the requirements of the nation in this respect.

6. Attention is directed to unfarmed acreages in established irrigated areas and we suggest that these acreages be used for placement of veterans before any extensive development of new acreages is attempted.

7. We recognize in the recently announced development program of the Bureau of Reclamation a close resemblance to outright "authority" proposals and we recommend opposition to all such proposals in whatever guise they are presented.

8. The growing scarcity of water in the development of the West demands aggressive research in all phases of irrigation and irrigated agriculture so that waste can be avoided and maximum efficiency can be obtained in the use of water and the development of water supplies. We recommend that the Land Grant Colleges be requested to expand their activities in such investigative work and to compile bibliographies dealing with all phases of those subjects.

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C.F.B.F.
RESOLUTION NO. 10

Passed on November 20, 1947
Adopted by House of Delegates

OWNERSHIP OF LANDS UNDER NAVIGABLE WATERS

Since the founding of the Republic the several States have been uniformly recognized as the owners of the navigable waters and lands beneath such waters within their respective boundaries. The Congress has recognized this traditional ownership in numerous statutes. The recent tidelands decision of the United States Supreme Court has clouded these titles to the irreparable damage of the States in its encroachment upon the rights of the States to the use of one of their most valuable natural resources.

We, therefore, urge that the Congress take immediate action through such surrender of title or interest as may be necessary declaring the law to be substantially as follows:

(1) The exercise of the Federal government's paramount powers in national defense, international affairs and commerce shall not of itself be interpreted as vesting any proprietary interest in the land or resources so defended or dealt with.

(2) Except as to those lands which the government has previously acquired by purchase, condemnation or donation, the respective states own the title to all lands beneath the navigable waters within their boundaries subject to such regulatory powers in the Federal government as may be necessary in exercising its constitutional powers of and in national defense, commerce, and international affairs.

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C.F.B.F.
RESOLUTION NO. 11

Passed on November 20, 1947
Adopted by House of Delegates

SOIL AND WATER CONSERVATION

The basic wealth of California is in its topsoil and the maintenance and improvement of its fertility is the most important problem confronting agriculture today. Soil erosion in many parts of California with increasing severity is deteriorating this topsoil. It is reducing fertility as shown by declining yields and is intensifying the severity of drought by diminishing the underground water reserves and increasing the runoff. This soil erosion is promoting floods that result in higher cost of road, highway and bridge maintenance and in all types of farm operation. These conditions lead to the improverishment of operators of eroded lands; poor land makes poor people, and poor people make poor communities.

Experience has demonstrated the feasibility and value of soil and water conservation programs formulated and executed by group action with a maximum degree of local control.

The California Farm Bureau Federation in its position of community leadership should include on its agenda an aggressive program of soil and water conservation to encourage and promote the principles of conservation and actively support programs of practical action so that it may influence the owners and tillers of land to be better stewards of the soil for themselves and those who follow.

We oppose any legislative changes which will hamper or change the character of this vital work or which will in any way militate against maximum local control in the formulation and execution of soil and water conservation programs.

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C.F.B.F.
RESOLUTION NO. 12

Passed on November 20, 1947
Adopted by House of Delegates

SUPPORT OF INDIVIDUAL WATER RIGHTS

The Bureau of Reclamation in the distribution of water for irrigation in the Central Valley Project is proposing contracts with water users' organizations which would establish the United States in perpetuity as a public utility in the distribution of water on a rental basis.

Since the United States is not subject to the usual and accepted laws regulating the rates and services of public utilities, such contracts would subject water users to the domination of an agency to which has been delegated a portion of the sovereign power of the United States without effective checks upon its exercise.

Under the interpretation of the law by the Bureau of Reclamation, the term of such contracts cannot exceed 40 years and under their provisions conceivably could be much less, and at the end of such term, the contracting organization and its water users would have no right to continued service, or to a renewal or even to the privilege of negotiating for a new contract.

Such practices violate and nullify the fundamental policy established by the Congress in the Federal Reclamation Law assuring water users permanent water rights appurtenant to the lands making beneficial use of the water, and providing for water user care, operation and maintenance of distribution facilities.

We, therefore, urge support of legislation assuring water user organizations contracting with the United States under the Federal Reclamation Laws the right to acquire permanent water rights and control of their distribution facilities.

Pending the enactment of such legislation, we oppose any and all contracts which do not make adequate provision in this respect.

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C.F.B.F.
RESOLUTION NO. 13

Passed on November 20, 1947
Adopted by House of Delegates

160-ACRE LIMITATION

We reaffirm our original and continuously maintained position insisting upon the elimination of all excess land limitations of Federal Reclamation law insofar as the Central Valley Project is concerned. Despite constant contact with the problems created by the water right laws of California and the complication arising from the underground water situation in the central valleys, neither the Bureau of Reclamation nor any of the proponents of acreage limitations have offered any practicable or legal solutions to the admitted problems resulting from the attempted application of such limitations to the Central Valley Project.

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C.F.B.F.
RESOLUTION NO. 14

Passed on November 20, 1947
Adopted by House of Delegates

COMPLETION OF CENTRAL VALLEY PROJECT

The Central Valley Project had its inception in the increasing and critical shortage of water for irrigation in the San Joaquin Valley. This project has been

under construction since 1935 and present plans of the Bureau of Reclamation do not include the delivery of any water for irrigation in the areas of critical shortages until 1952. The hydroelectric power features of the Project were included in the Project for the purpose of financially aiding and assisting the other purposes of the Project.

We insist that the long and unduly delayed delivery of irrigation water in the central valleys be expedited beyond the present program and to the greatest possible extent and that other authorized federal water conservation and flood control projects in the central valleys be completed at the earliest practicable date.

Irrigation is the primary objective of the Central Valley Project and the basic law authorizes the inclusion in the Project of hydroelectric power facilities for the purpose of financially aiding the Project.

We oppose the expenditure of any funds for the construction of electric power facilities which will reduce the financial aid to the Project which can be derived from hydroelectric power developments.

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A.F.B.F.
RESOLUTION

Adopted on December 18, 1947
Adopted by Annual Convention

LAND AND WATER USE

Conservation -- We believe it is a sacred obligation of this generation to conserve our national resources for future generations and to achieve wise development and use of resources in such a manner as to make the maximum contribution to our national welfare.

Increased emphasis upon research and education is needed to find the most practical means by which our national resources can be conserved both by private owners of land and on lands held by the government. We will support appropriations for proper agencies to develop and to demonstrate the application of practical techniques in this important field. Additional thought should be given to developing the best organizational methods and measures for the application of conservation knowledge to the land and forest resources.

Since available information indicates that the greatest value of the high mountain lands lies in the watershed use, those responsible for the management of mountainous lands should recognize the watershed function of such land as the first but not the exclusive use, and should strive for proper coordination of all uses, varying the methods to suit local conditions.

On all lands to the greatest extent practicable it should be the policy to conserve the water where it falls, but this policy should not be such as would result in diminishing water supplies of irrigated areas.

Private Ownership

Land Ownership -- It should be the general policy that the largest possible proportion of the land of the Nation be owned and operated by private individuals.

We recommend that in each of the States a procedure be developed whereby the land can be classified according to its highest use or combination of uses, showing lands best suited for forests, for water yield, for grazing, for general farming, or for various combinations of these. Classification should also indicate lands now held by the Government which might be suited to private ownership. This classifying should be done by local people in cooperation with technicians in the respective States with adequate representation by all interested parties. In addition to local and statewide committees it may be necessary to have regional committees to deal with those problems associated with sources of water involving more than one State. The American Farm Bureau Federation should then support the necessary legislation to bring about the handling and use of land in the respective regions consistent with the results of such classification.

In cases where the Government offers land of the public domain for sale to private individuals, we favor sale of units of such size as will enable the farmer or rancher to operate efficiently. On the lands retained in Federal Government ownership we favor giving the grazing users as much security of tenure as is compatible with the public interest in the management of the resource. There should be an adequate program of improvement of the grazing resources of the public lands, and when reductions in grazing use are essential for the protection of the resource, the users should have a sufficient period of time to make the adjustment in their operations.

To achieve better coordination in administration of governmentally-owned land, we believe that all the agricultural phases of public land management should be administered through the Department of Agriculture, provided legal authority for effective producer advisory committees be established.

Selection of Projects

Reclamation and Irrigation -- Since irrigation is the foundation of much of the agricultural and industrial development of the arid west, it is realized that the future development of this region, to the extent necessary to maintain the needed agricultural production for high living standards, is in the best long-time interest of the Nation. The reclamation projects selected for development in the future should be those with the best agricultural feasibility, as determined by the United States Department of Agriculture and the appropriate Land Grant Colleges, and only those with a favorable ratio of benefits, including the public benefits, to the costs. To the greatest practicable extent irrigation projects should be developed by local enterprise. Consideration should be given to the study of plans whereby interest payments can be made by those receiving the benefits of the Federal projects and to developing plans which will encourage repayments at the earliest possible date, thereby encouraging the maximum amount of individual initiative to acquire homesteads free of all encumbrances. Congressional authorization of irrigation projects should be required prior to the appropriation of expenditure of Federal funds for construction.

All of the agricultural features of irrigation projects should be administered through the United States Department of Agriculture, and we oppose the attempts of some agencies to duplicate the services now available through existing agencies.

We favor the use of reasonable acreage limitations on Federal irrigation project developments of new lands, but such acreage limitations as are imposed should emphasize high productivity per farm family rather than seek to place the maximum number of families on the project. We favor the active support of the elimination of the 160-acre limitation on Federal reclamation projects consisting largely or wholly of privately-owned farm lands in established irrigation areas being actively farmed or having existing water rights.

The American Farm Bureau Federation opposed any handling of water as a public utility in Federal reclamation, and strongly believes that the State water laws and the individual property rights in water must be held inviolate by the Federal Government.

Local Autonomy

Since there has been a trend of increased Government bureau dominance over local communities in Federal reclamation projects, the American Farm Bureau Federation favors and aggressively supports maximum local autonomy in the administration of such projects.

We reaffirm the rule of the original reclamation law that water rights become appurtenant to the lands irrigated. State laws and established water rights must be fully respected. Supplemental water requirements of existing irrigated lands shall have priority over new developments, and satisfactory evidence of an adequate water supply should precede new irrigation developments based upon such supply.

The Bureau of Reclamation's control over water and water rights should be only incidental to construction and limited to the period of construction, then terminated upon delivery of the water.

Irrigation projects should have the maximum assistance in reimbursement of construction costs from other purposes served by the project.

Increased use of western water resources requires effective research in all phases of irrigation and irrigated agriculture, and this should be done by the appropriate existing research divisions of the United States Department of Agriculture and the Land-Grant Colleges.

In the planning and administration of all public development programs concerning agriculture, due consideration should be given to the establishment of producer committees to assist in the planning and the operation of such programs.

SECTIONS OF RECLAMATION LAW

Section 5 of Original Reclamation Act (32 Stat. 388) relating to acreage limitation is in part as follows:

"That the entryman upon lands to be irrigated by such works shall, in addition to compliance with the homestead laws, reclaim at least one-half of the total irrigable area of his entry for agricultural purposes, and before receiving patent for the lands covered by his entry shall pay to the Government the charges apportioned against such tract, as provided in Section 4. No right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres to any one landowner, and no such sale shall be made to any land owner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made ..... "

Section 8 of Original Reclamation Act - Irrigation laws of States and Territories not Affected -- Interstate streams -- Water rights.

"That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: Provided, That the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right. (32 Stat. 390.)"

Title 43. U. S. Code Annotated

"Section 418. Private Lands Within Project: Agreement as to Disposal of Excess Over Farm Unit. Before any contract is let or work begun for the construction of any reclamation project adopted after August 13, 1914, the Secretary of the Interior shall require the owners of private lands thereunder to agree to dispose of all lands in excess of the area which he shall deem sufficient for the support of a family upon the land in question, upon such terms and at not to exceed such price as the Secretary of the Interior may designate; and if any landowners shall refuse to agree to the requirements fixed by the Secretary of the Interior, his land shall not be included within the project if adopted for construction."

"Section 431. Water Right Applications Generally; Limitation as to Amount of Water; Qualifications of Applicant. No right to the use of water for land in private ownership shall be sold for a tract exceeding one hundred and sixty acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made. (June 17, 1902, c. 1093, s 5, 32 Stat. 389.)"

(Note: Underscoring supplied)

"Section 434. Amount of Land for Which Entry May be Made; Farm Unit, Subdivision of Lands. Public lands which it is proposed to irrigate by means of any contemplated works shall be subject to entry in tracts of not less than forty nor more than one hundred and sixty acres: provided, that whenever, in the opinion of the Secretary of the Interior, by reason of market conditions and the special fitness of the soil and climate for the growth of fruit and garden produce, a lesser area than forty acres may be sufficient for the support of a family on lands to be irrigated under the provisions of the reclamation law, he may fix a lesser area than forty acres as the minimum entry, and may establish farm units of not less than ten nor more than one hundred and sixty acres ....." (June 27, 1906)

EXCERPT FROM OMNIBUS ADJUSTMENT ACT
May 25, 1926
(Cited by Proponents of 160-acre Limitation)

No water shall be delivered upon the completion of any new project or new division of a project until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or irrigation districts organized under State law providing for payment by the district or districts of the cost of constructing, operating, and maintaining the works during the time they are in control of the United States, such cost of constructing to be repaid within such terms of years as the Secretary may find to be necessary, in any event not more than forty years from the date of public notice hereinafter referred to, and the execution of said contract or contracts shall have been confirmed by a decree of a court of competent jurisdiction. Prior to or in connection with the settlement and development of each of these projects, the Secretary of the Interior is authorized in his discretion to enter into agreement with the proper authorities of the State or States wherein said projects or divisions are located whereby such State or States shall cooperate with the United States in promoting the settlement of the projects or divisions after completion and in the securing and selecting of settlers. Such contract or contracts with irrigation districts hereinbefore referred to shall further provide that all irrigable land held in private ownership by any one owner in excess of one hundred and sixty irrigable acres shall be appraised in a manner to be prescribed by the Secretary of the Interior and the sale prices thereof fixed by the Secretary on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works; and that no such excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary of the Interior and at prices not to exceed those fixed by the Secretary of the Interior; and that until one-half of the construction charges against said lands shall have been fully paid no sale of any such lands shall carry the right to receive water unless and until the purchase price involved in such sale is approved by the Secretary of the Interior and that upon proof of fraudulent representation as to the true consideration involved in such sales the Secretary of the Interior is authorized to cancel the water right attaching to the land involved in such fradulent sales: PROVIDED FURTHER, That the operation and maintenance charges on account of lands in said projects and divisions shall be paid annually in advance not later than March 1. It shall be the duty of the Secretary of the Interior to give public notice when water is actually available, and the operation and maintenance charges payable to the United States for the first year after such public notice shall be transferred to and paid as a part of the construction payment. (44 Stat. 649, 650.)

(Note: Underscoring supplied)

UNITED STATES CODE ANNOTATED

Title 43--Public Lands

Chapter 12

Section 544. Limitation as to holdings prior to final payment of charges; forfeiture of excess holding. No person shall at any one time or in any manner, except as hereinafter otherwise provided, acquire, own, or hold irrigable land for which entry or water-right application shall have been made under the said reclamation law, before final payment in full of all installments of building and betterment charges shall have been made on account of such land in excess of one farm unit as fixed by the Secretary of the Interior as the limit of area per entry of public land or per single ownership of private land for which a water right may be purchased respectively, nor in any case in excess of one hundred and sixty acres, nor shall water be furnished under said law nor a water right sold or recognized for such excess; but any such excess land acquired at any time in good faith by descent, by will, or by foreclosure of any lien may be held for two years and no longer after its acquisition; and every excess holding prohibited as aforesaid shall be forfeited to the United States by proceedings instituted by the Attorney General for that purpose in any court of competent jurisdiction. The above provision shall be recited in every patent and water-right certificate issued by the United States under the provisions of sections 541-543 of this title. (Aug. 9, 1912, c. 278, Sec. 3, 37 Stat. 266.)

(Note: Underscoring supplied)

RECLAMATION PROJECT ACT, 1939

"SEC. 9 (d)." (No water delivered until repayment contract executed providing (1) development period for each irrigation block, (2) construction cost allocable to irrigation to be included in general repayment obligation -- Distribution of construction charges on account productivity of land and benefits accruing, (3) repayment in annual installments over period not exceeding 40 years, (4) first annual installment on date fixed by Secretary, (5) (a) yearly installment of repayment obligation to be construction charge due for such year or (b) obligation to be increased or decreased on basis provided in sec. 4.)-- "No water may be delivered for irrigation of lands in connection with any new project, new division of a project, or supplemental works on a project until an organization, satisfactory in form and powers to the Secretary, has entered into a repayment contract with the United States, in a form satisfactory to the Secretary, providing among other things --

"(1) That the Secretary may fix a development period for each irrigation block, if any, of not to exceed ten years from and including the first calendar year in which water is delivered for the lands in said block; and that during the development period water shall be delivered to the lands in the irrigation block involved at a charge per annum per acre-foot, or other charge, to be fixed by the Secretary each year and to be paid in advance of delivery of water: Provided, That where the lands included in an irrigation block are for the most part lands owned by the United States, the Secretary, prior to execution of a repayment contract, may fix a development period, but in such case execution of such a contract shall be a condition precedent to discovery of water after the close of the development period. After the close of the development period, any such charged collected and which the Secretary determines to be in excess of the cost of the operation and maintenance during the development period shall be credited to the construction cost of the project in the manner determined by the Secretary.

"(2) That the part of the construction costs allocated by the Secretary to irrigation shall be included in a general repayment obligation of the organization; and that the organization may vary its distribution of construction charges in a manner that takes into account the productivity of the various classes of lands and the benefits accruing to the lands by reason of the construction: Provided, That no distribution of construction charges over the lands included in the organization shall in any manner be deemed to relieve the organization or any party or any land therein of the organization's general obligation to the United States.

"(3) That the general repayment obligation of the organization shall be spread in annual installments, of the number and amounts fixed by the Secretary, over a period not exceeding forty years, exclusive of any development period fixed under subsection (d) (1) of this section, for any project contract unit, or for any irrigation block, if the project contract unit be divided into two or more irrigation blocks.

"(4) That the first annual installment for any project contract unit, or for any irrigation block, as the case may be, shall accrue, on the date fixed by the Secretary, in the year after the last year of the development period or, if there be no development period, in the calendar year after the Secretary announces that the construction contemplated in the repayment contract

is substantially completed or is advanced to a point where delivery of water can be made to substantially all of the lands in said unit or block to be irrigated; and if there be no development period fixed, that prior to and including the year in which the Secretary makes said announcement water shall be delivered only on the toll charge basis hereinbefore provided for development periods.

"(5) Either (A) that each year the installment of the organization's repayment obligation scheduled for such year shall be the construction charges due and payable by the organization for such year; or (B) that each year the installment for such year of the organization's repayment obligation shall be increased or decreased on the basis of the normal and percentages plan provided in section 4 of this act for modification of existing obligations to pay construction charges, and the amount of the annual installment of the organization's obligation, as thus increased or decreased, shall be the construction charges due and payable for such year. Under (B) of this subsection the provisions of section 4 of this act shall be applicable, as near as may be, to the repayment contract made in connection with the new project, new division of a project or supplemental works on a project; and the organization shall make payments on the basis therein provided until its general repayment obligation has become due and payable to the United States in full."

"SEC. 9 (e)." (Short- or long-term contracts to furnish water for irrigation -- Payment in advance of delivery of water -- Cost of works to be covered by repayment contract under subsec. (d).) "In lieu of entering into a repayment contract pursuant to the provisions of subsection (d) of this section to cover that part of the cost of the construction of works connected with water supply and allocated to irrigation, the Secretary, in his discretion, may enter into either short- or long-term contracts to furnish water for irrigation purposes. Each such contract shall be for such period, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and allocated to irrigation; and shall require payment of said rates each year in advance of delivery of water for said year. In the event such contracts are made for furnishing water for irrigation purposes, the costs of any irrigation water distribution works constructed by the United States in connection with the new project, new division of a project, or supplemental works on a project, shall be covered by a repayment contract entered into pursuant to said subsection (d)."

EXCEPTION FOR COLORADO-BIG THOMPSON PROJECT

The Colorado-Big Thompson Project was specially exempted under the Act of June 16, 1938 (52 Stat. 764) which provides:

> "That the excess-land provisions of the Federal Reclamation laws shall not be applicable to lands which now have an irrigation water supply from sources other than a Federal Reclamation project and which will receive a supplemental supply from the Colorado-Big Thompson Project."

The Committee on Irrigation and Reclamation of the Senate (7th Congress, 3d Session, Report No. 1921) stated:

> "The Federal reclamation laws, as originally adopted, were for the purpose of supplying unused water to undeveloped public lands. In order to make provision for as large a number of settlers under projects as would be economically feasible, and to prevent individuals from acquiring more than a fair share of the land to be reclaimed, the Congress limited the amount of land which could be owned by one individual and supplied with water from the reclamation project to 160 acres. This provision was entirely appropriate to conditions to which it was intended to be applied.
>
> "The situation under the Colorado-Big Thompson Project, the only one involved in the present bill, is quite different from that of the earlier reclamation projects. The Colorado-Big Thompson Project does not bring under cultivation new land. It is intended to furnish a supplemental supply of water to an already highly developed area of agricultural lands. These lands are now in private ownership and irrigated by numerous existing irrigation ditches. Due to various factors, such as more intensive cultivation, drought, and increased consumption of water by other systems, the water supply for this large area, amounting to 615,000 acres, is inadequate in many seasons to insure the maturing of crops. This project will supply the necessary additional water to make certain the harvests which are now uncertain. Congress, in authorizing the making of appropriations for this project, inserted a condition not imposed upon other reclamation projects. The law requires that before construction of this project is commenced, contracts satisfactory to the Secretary of the Interior shall be made with the prospective users of the water which will insure the repayment of the total cost of the irrigation features of the project. Such a provision, of course, could not be included in a project which was intended to open land to settlers who could not come upon the land until the project was completed.
>
> "By reason of the normal farming development in such a large area, there are many individuals owning and cultivating in excess of 160 acres of land. In order that the contracts for repayments of the cost shall be provided as required, by law, it is necessary that these farmers with tracts in excess of 160 acres shall become parties to the contract and purchasers of the water. As stated above, this project deals with an existing situation. This bill, S. 4027, amends the provisions of the Federal reclamation law by exempting the lands under the Colorado-Big Thompson Project from the 160 acre limitation.
>
> "This bill has been approved by the Commissioner of Reclamation and the Interior Department."
>
> (Note: Underscoring supplied)

Sacramento Office Draft 12-17-47

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES AND THE
LINDMORE DISTRICT
PROVIDING FOR WATER SERVICE AND FOR THE
CONSTRUCTION OF A DISTRIBUTION SYSTEM

1. THIS CONTRACT, made this _____ day of _____, 194_, in pursuance generally of the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all collectively herein styled the Federal reclamation laws, between THE UNITED STATES OF AMERICA, herein styled the United States, represented by the Secretary of the Interior, and the ([redacted])IRRIGATION DISTRICT, a political subdivision of the State of California, duly organized, existing and acting pursuant to the laws thereof, with its principal place of business in the City of ([redacted]) State of California, herein styled the District.

WITNESSETH, THAT:

EXPLANATORY RECITALS

2. WHEREAS, the United States is constructing the Central Valley Project for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, generation and distribution of electric energy, salinity control, navigation and other purposes, of waters of the Sacramento River and San Joaquin River and their tributaries; and

(NOTE: Underscoring supplied.)

3. WHEREAS, the United States proposes to construct and operate the Friant-Kern Canal, which will be used, in part, for the furnishing of water to the District pursuant to the terms of this contract; and

4. WHEREAS, the District desires to contract, pursuant to the Federal reclamation laws and the laws of the State of California, for the furnishing by the United States of a supplemental water supply from the Project for which the District will make payment to the United States upon the basis, at the rates, and pursuant to the conditions hereinafter set forth; and

5. WHEREAS, investigations of the District lands and present water supply indicate that irrigated and irrigable lands within the boundaries of the District are at present in need of additional water for irrigation and certain areas have a potential need of water for irrigation, and that ground water underlying the District is seriously depleted and in need of replenishment and that an additional water supply to meet these present and potential needs can be made available by and through the works constructed and to be constructed by the United States; and

6. WHEREAS, investigations of the stream flow in the Sacramento River and the San Joaquin River and their tributaries indicate that there will be available for furnishing to the District from the Friant-Kern Canal an additional water supply for surface diversion and direct application for irrigation, and directly or indirectly to replenish depleted ground waters underlying the District; and

7. WHEREAS, the District, in order to utilize the water supply made available from the Central Valley Project under Part A of this contract and

such future contracts as may be made between the United States and the District, desires that a general distribution and lateral system be constructed for the District by the United States acting by and through the Bureau of Reclamation, United States Department of the Interior, pursuant to the Federal reclamation laws; and

8. WHEREAS, the United States is willing to undertake the construction of the aforementioned distribution system under the conditions hereafter set forth;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed by the parties hereto as follows:

DEFINITIONS

9. When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the term

(a) "Secretary" or "contracting officer" shall mean the Secretary of the United States Department of the Interior or his duly authorized representative;

(b) "Project" shall mean the Central Valley Project, California, of the Bureau of Reclamation;

(c) "initial delivery date" shall mean the date announced by the Secretary, on which water first will be available for furnishing to the District by means of the Friant-Kern Canal pursuant to Part A of this contract;

(d) "year" shall mean the period from and including March 1 of each calendar year through the last day of February of the following calendar year;

(e) "calendar year" shall mean the period from January 1 through December 31, both dates inclusive:

(f) "Part A" shall mean Articles 10 through 17:

(g) "Part B" shall mean Articles 18 through 24:

(h) "contract" shall mean Articles 1 through 42:

(i) "Class 1 water" shall mean that supply of water at Friant Dam and reservoir which, subject to the contingencies described in Article 16 hereof, will be available for delivery from the Friant-Kern and Madera Canals and the San Joaquin River as a dependable water supply during each irrigation season:

(j) "Class 2 water" shall mean that supply of water which becomes available in addition to the supply of Class 1 water and which, because of its uncertainty as to availability and time of occurrence, will be undependable in character and will be furnished only if, as, and when said water is available as determined by the United States.

PART A

TERM OF PART A OF CONTRACT

10. The term of Part A shall extend for a period of forty (40) years, including the year in which the initial delivery date occurs.

WATER TO BE FURNISHED TO DISTRICT

11. (a) After the initial delivery date and until March 1 of the year following the completion of the distribution system, as announced by the contracting officer as prescribed in Article 18(b), or for a period of

five years after March 1 of the year following that in which the initial delivery date occurs, whichever is the longer period, the United States will furnish to the District and the District each year will accept and pay, as provided in Article 13, for Class 1 and Class 2 water from the Madera Canal in the quantities specified in a schedule submitted by the District in accordance with Article 12(a) for such year; Provided, That no Class 1 water shall be furnished to the District and the District shall not be obligated to accept or to pay for Class 1 water until the date, announced by the Contracting Officer, that the facilities necessary for furnishing Class 1 water have been completed, and after said date no more than percent of the total quantity of water called for by the District during any such year in the aforesaid schedule shall be Class 2 water, nor shall the United States be obligated to furnish more than acre-feet of Class 1 water during any such year.

(b) Each year after the completion of the distribution system, as announced by the Contracting Officer, as provided in Article 18(b), or after the expiration of five years from March 1 of the year following that in which the initial delivery date occurs, whichever is the later, the United States shall furnish to the District from the Friant-Kern Canal and the District shall accept and pay for:

(i) acre-feet of Class 1 water: Provided, That the District may at any time or times within 15 years after the initial delivery date, and upon written notice to the United States, increase or, by mutual agreement of the parties hereto, decrease the amount of

Class 1 water required thereafter to be sold and delivered each year to the District by the United States during the remainder of the term of Part A, but in no event shall the total amount of Class 1 water required to be furnished and delivered by the United States and to be accepted and paid for by the District in any year be in excess of acre-feet; and

(ii) Such amounts of Class 2 water as do not exceed whichever is the least of the following:

(a) acre-feet of Class 2 water;

(b) percent of the total quantity of Class 2 water delivered into the Madera and Friant-Kern Canals during the year;

(c) the amount of Class 2 water available for delivery to the District at the time or times for such delivery, notwithstanding any prior estimate of availability, all as the same may be determined by the Contracting Officer; Provided, That the District shall not be obligated to accept more than acre-feet of Class 2 water during any calendar month, and: Provided further, That at any time or times during the term of Part A the maximum quantity of Class 2 water required to be accepted and to be paid for by the District each year pursuant to this article during the remaining term of Part A may be increased or decreased if the District and the Contracting Officer concur

in a finding that such increase or decrease is necessary or desirable.

TIME FOR DELIVERY OF WATER

12. (a) The District shall submit in writing to the contracting officer on or before March 1 of each year a schedule, subject to the provisions of Article 11 hereof and satisfactory to the contracting officer, indicating the desired times and quantities for the delivery of all Class 1 and Class 2 water pursuant to this contract during such year and the United States shall within the provisions hereof, attempt to deliver said water in accordance with said schedule, or any revision thereof satisfactory to the contracting officer submitted by the District within a reasonable time before the desired change of the time for delivery, as nearly as may be feasible as conclusively determined by the contracting officer.

(b) The District may, with the written consent of the contracting officer, in any year exchange water with any other District which has contracted with the United States for water from the Project. No sale or other disposal by the District for use outside the District, of any water, or the right to the use thereof, furnished to the District pursuant to this contract shall be valid without the contracting officer's written consent thereto.

RATE AND METHOD OF PAYMENT FOR WATER

13. (a) The contracting officer will, on or before February 15 of each calendar year, by written notice, notify the District of the rates of payment to be made by the District for all water to be delivered to it pursuant to this contract during the ensuing year, but in no event shall the rates so

announced be in excess of per acre-foot for Class 1 water and per acre-foot for Class 2 water.

(b) The District shall, each year during the period described in Article 11(a) hereof, in advance of the delivery of any water for said year make payments for all Class 1 and Class 2 water requested by the District in the schedule submitted as aforesaid at the rates fixed in the manner provided in (a) of this article.

(c) During the period described in Article 11 (b), the District shall, each year in advance of the delivery of water for said year, make payment to the United States, at rates fixed as provided in (a) of this article for all Class 1 water which the District is required to receive pursuant to the provisions of said Article 11(b). Such payments by the District shall be made on or before March 1 or such other date, prior to the time for commencement of delivery of such water, of the respective year as may be specified by the contracting officer in written notice to the District.

(d) In the event the District fails or refuses to accept delivery of the quantities of water available for delivery to and required to be accepted by it pursuant to this contract, or in the event the District in any year, commencing with the year in which the distribution system has been completed, as announced by the United States as provided in Article 18(b) hereof, or the sixth year after the initial delivery date, whichever is the later, fails to submit a schedule for delivery as provided in Article 12(a) of this contract, said failure or refusal shall not relieve the District of its obligation to

pay for said water and the District agrees to make payment therefor in the same manner as if said water had been delivered to and accepted by it in accordance with this contract.

(e) Water furnished to the District during any month designated in the schedule submitted by it pursuant to Article 11, for the furnishing of water to the District, shall be deemed to have been accepted as Class 1 water to the extent that Class 1 water is called for in said schedule for said month and all water furnished to the District in excess of the amount of Class 1 water called for in said schedule for said month shall be deemed to have been accepted as Class 2 water. Water available for furnishing to the District in accordance with the approved schedule and not accepted by the District shall be deemed to have been accepted by the District in accordance with the aforesaid schedule.

ADJUSTMENTS

14. The amount of any overpayment by the District by reason of the quantity of water actually available for the District during any year, as conclusively determined by the contracting officer, having been less than the quantity of such water which the District otherwise under the provisions of this contract would have been required to receive and pay for, shall be applied first to any accrued indebtedness arising out of Part A then due and owing to the United States by the District and any amount of such overpayment then remaining shall, at the option of the District, be refunded to the District or credited upon amounts to become due to the United States from the District under the provisions of Part A in the ensuing year.

POINT OF DELIVERY, MEASUREMENT AND
RESPONSIBILITY FOR DISTRIBUTION OF WATER

15. (a) The water to be furnished to the District pursuant to this contract will be delivered at Friant-Kern Canal at such points as may be mutually agreed upon in writing by the contracting officer and the District: Provided, however, That in the event that the United States shall have reached the construction of the portion of the Friant-Kern Canal, which probably will embrace such points, and the location has not been so agreed upon such points shall be established at locations as, in the conclusive determination of the contracting officer will best serve the needs of the District.

(b) All water delivered pursuant to this contract shall be measured by the United States at each point of delivery established pursuant to (a) of this article and with equipment installed, operated, and maintained by the United States. Upon the request of the District, the accuracy of such measurements will be investigated by the contracting officer and any errors appearing therein adjusted.

(c) The United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water which may be furnished to the District hereunder, outside the facilities then being operated and maintained by the United States, nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water outside of such facilities: Provided, That the United States reserves the right to all

waste, seepage, and return flow water derived from water furnished to the District hereunder and which escapes or is discharged beyond the District's boundaries and nothing herein shall be construed as an abandonment or a relinquishment by the United States of any such water, but this shall not be construed as claiming for the United States any right, as waste, seepage, or return flow, to water being used pursuant to this contract for surface irrigation or underground storage within the District's boundaries by the District or those claiming by, through, or under the District.

(d) Notwithstanding any provision of this contract to the contrary, the United States shall not be obligated to furnish either Class 1 or Class 2 water to the District pursuant to Part A unless and until the construction by the United States of facilities to the extent required for furnishing of the respective class of water to the District has been completed as conclusively determined by the contracting officer.

(e) The United States may temporarily discontinue or reduce the amount of water to be furnished to the District as herein provided for the purpose of such investigation, inspection, maintenance, repair, or replacement as may be necessary of any of the project facilities necessary for the furnishing of water to the District or any part thereof but so far as feasible the United States will give the District due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. In the event of any such discontinuance or reduction, the United States will, upon the resumption of service, attempt to approximate

the quantity of water which would have been furnished to the District in the absence of such contingency.

UNITED STATES NOT LIABLE FOR WATER SHORTAGE

16. (a) There may occur at times a shortage during any year in the quantity of water available for furnishing to the District by the United States pursuant to this contract through and by means of the project and in no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising from a shortage on account of errors in operation, drought or unavoidable causes. In no event shall the United States (A) deliver from Friant Dam in any year any Class 2 water pursuant to this or any other contract heretofore or hereafter entered into involving the same project water supply, until the contracting officer shall have determined that the quantity of Class 1 water required to be delivered to the District from Friant Dam hereunder and to others under any such other contract will be available for delivery in said year, nor (b) execute contracts which, together with this contract, shall in the aggregate provide for furnishing during the life of this contract Class 1 water from Friant Dam in excess of 800,000 acre-feet per year. In any year in which there may occur a shortage from any cause, the United States reserves the right to apportion the available water supply among the District and others entitled, under existing and future contracts, to receive Class 1 water from Friant Dam in accordance with conclusive determination of the contracting officer as follows:

(i) A determination shall be made of the total quantity of Class 1 water agreed to be accepted during the respective year under all contracts then in force for the delivery of Class 1 water through Friant-Kern and Madera Canals and the San Joaquin River from Friant Dam, the amount so determined being herein referred to as the Class 1 contractual commitments.

(ii) A determination shall be made of the total quantity of Class 1 water at Friant Dam which is available for meeting Class 1 contractual commitments, the amount so determined being herein referred to as the available supply.

(iii) The total quantity of Class 1 water agreed to be accepted by the District during the respective year, under Article 11 hereof, shall be divided by the Class 1 contractual commitments, the quotient thus obtained being herein referred to as the District's contractual entitlement.

(iv) The available supply shall be multiplied by the District's contractual entitlement and the result shall be the quantity of water required to be delivered by the United States to the District for the respective year, but in no event shall such amount exceed the total quantity of Class 1 water agreed to be accepted by the District pursuant to Article 11 hereof.

In so far as determined by the contracting officer to be practicable, the United States will, in the event a shortage appears probable, notify the

District of such determinations in advance of the irrigation season. In the event that in any year there is delivered to the District, by reason of any such shortage or apportionment, or any discontinuance or reduction of service as set forth in Article 15(e) hereof, less than the quantity of water which the District otherwise would be entitled to receive hereunder, there shall be made an adjustment on account of the amounts paid to the United States by the District for Class 1 water for said year, in a manner similar to that provided for in Article 14 hereof. To the extent of such deficiency arising from errors in operation, or drouth or other unavoidable causes or any discontinuance or reduction of service as set forth in Article 15(e), such adjustment shall constitute the sole remedy of the District or any one having or claiming to have by, through, or under the District, the right to the use of any of the water supply provided for herein. The United States does not guarantee the sale and delivery of any Class 2 water and such Class 2 water will be furnished and delivered to the District only if, as, and when said water is available for delivery to the District as conclusively determined by the contracting officer.

(b) The rights of the District under Part A of this contract are subject to the terms of the Contract for Exchange of Waters dated July 27, 1939, between the United States and the San Joaquin and Kings River Canal and Irrigation Company, Incorporated, and others, and recorded on the 18th day of September 1939, in the office of the County Recorder of

(i) Fresno County in Book 1810 of Official Records at Page 50;

(ii) Stanislaus County in Book 704 of Official Records at Page 1;

(iii) Merced County in Book 623 of Official Records at Page 417;

(iv) Madera County in Book 247 of Official Records at Page 113.

USE OF WATER FURNISHED TO DISTRICT

17. The District agrees that water furnished to it by the United States pursuant to Part A will not be delivered or furnished by the District for any purpose other than agricultural purposes, including but not restricted to the watering of stock, or underground water replenishment without the written consent of the contracting officer.

PART B

CONSTRUCTION OF WORKS AND
LIMIT OF EXPENDITURES THEREFOR

18. (a) To the extent that funds may now or hereafter be available by appropriation the United States will expend toward construction of a general distribution and lateral system, surface drainage works, and other related distribution and surface drainage works, all collectively comprising and herein styled the distribution system, a sum not in excess of

Dollars, or

so much thereof as the contracting officer deems expedient or necessary for the completion of the distribution system. Said distribution system will not include the Friant-Kern Canal. The distribution system will be constructed so as to provide facilities for the delivery of water from the Friant-Kern Canal to each unit of a total of approximately

acres of irrigable land, each unit to be as

mutually agreed upon by the District and the contracting officer but in no event to comprise more than 160 acres of such land. The general type and layout of the distribution system shall be subject to the review and approval of the District, evidenced by a resolution of the District Board of Directors, prior to the commencement of construction of the distribution system.

(b) When the contracting officer notifies the District, in writing, that total expenditures have been made to the limit determined as provided in (a) of this article or so much thereof as the contracting officer considers necessary and useful for the construction of the distribution system as described in (a) of this article, the distribution system shall be deemed to have been completed within the meaning of this contract.

PAYMENT BY DISTRICT

19. (a) The District will repay to the United States the actual cost, but in no event in excess of

Dollars, incurred by the United States in providing the distribution system. The obligation defined in this subsection shall be referred to hereinafter as the construction obligation.

(b) 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 District, except that the United States reserves the right where rights-of-way are thus acquired to reimburse the owner of the servient lands for the value of improvements which may be destroyed and the District agrees that the United States may include such disbursements in the cost of

the distribution system to be repaid by the District. The District agrees to convey to the United States, on the request of the contracting officer, without cost, the unencumbered fee simple title to any and all lands owned by it or perpetual easements therein required for right-of-way purposes for the distribution system. Where rights-of-way are required for works herein agreed to be constructed by the United States, and such rights-of-way are not reserved to the United States under acts of Congress or otherwise, and the lands over which such rights-of-way are required are not then owned by the District, then the District agrees that it will, upon request of the United States acquire such lands, or perpetual easements therein, using in connection therewith such forms of contracts, deeds and other necessary papers as may be required by the United States, and purchases shall be only at prices that are satisfactory to the Secretary. Title shall be taken in the name of the United States, and on procuring execution of the necessary contracts, deeds and other papers, they shall be transmitted by the District to the United States by whom payment will be made, after title has been found satisfactory to the United States. Expenses incurred by the District in connection with acquisition above provided for shall, to the extent approved by the contracting officer, be paid to the District on the basis of annual statements submitted at the close of each calendar year, and shall be chargeable as part of the construction costs.

(c) Upon completion of the distribution system as in Article 18 (b) hereof provided, the United States shall give the District notice thereof, herein styled construction cost notice, which notice shall set forth the amount of the construction obligation, as conclusively determined by the

contracting officer: Provided, That, if at the time said notice is given a final determination of the construction costs cannot be made, an estimate thereof shall be made and such estimate shall govern the amount of the construction repayment installments hereinafter referred to until such time as the actual construction obligation can be determined as aforesaid and a statement thereof furnished to the District. The District agrees to pay the construction obligation, fixed as herein provided, in 40 successive equal annual installments, commencing with the calendar year following that in which the United States furnishes the construction cost notice to the District, which installments shall be payable one-half thereof on February 1 and one-half thereof on July 1 of such year and each calendar year thereafter until the construction obligation has been fully paid. When notice has been given to the District of the actual construction obligation, installments coming due thereafter from the District shall be adjusted to reflect any difference between the estimated cost and the actual cost of the distribution system.

(d) Should the Congress fail to make the necessary appropriations to complete work herein provided for, then the Secretary may, at such reasonable time as he may consider advisable after the Congress shall have failed to make the necessary appropriations which shall have been annually requested by the Secretary, give the District notice of the termination of work by the United States and furnish the District with a statement of the amount actually expended by the United States thereon and the amount set out in such statement shall be paid by the District in the manner set out in (c) of this article.

(e) The contracting officer may, at any time in his discretion, upon request of the District, evidenced by a certified copy of a resolution of the Board of Directors of the District, provide for dates upon which annual payments by the District of the District's construction obligation shall become due and payable other than and in lieu of those dates fixed for the payment of such annual installments as provided in (c) of this article.

SERVICE CHARGE BEFORE COMMENCEMENT OF CONSTRUCTION COST REPAYMENT

20. (a) Prior to the commencement of the construction obligation repayments provided for in Article 19 hereof, the contracting officer may, at his discretion, announce in writing and require the payment to the United States of a service charge for use of the distribution system for the benefit of District lands or users which charge may, in the discretion of the United States, include a minimum service charge to be paid in advance to the United States on account of all lands capable of being served, as conclusively determined by the contracting officer, by the portion or portions of the distribution system which can be used for the delivery of water. Such lands shall be designated in the aforesaid announcement and payment of the aforesaid service charge shall be made on account of all the lands so designated whether or not water shall in fact be used upon such lands. The District shall pay to the United States the service charges so established by the contracting officer and shall make necessary collections from landowners and other water users for such purpose, and shall require advance payment of such service charges by the landowners and those using water from the distribution system as a condition to the delivery of water and may require payment of toll charges or levy assessments for such service. Payment shall be made

by the District to the United States of these service charges or of the charges fixed in such notice and on or before the date therein specified.

(b) After the date on which the first installment of the construction obligation becomes due, any such service charges collected and which the Secretary determines to have been in excess of the cost of the operation and maintenance of the distribution system during the service charge period shall be credited to the construction obligation.

(c) All sums to be paid pursuant to Part E shall be in addition to those required to be paid pursuant to Part A of this contract.

ESTIMATED COST OF OPERATION AND MAINTENANCE TO BE PAID IN ADVANCE

21. (a) During the time that the distribution system or any part thereof is being operated by the United States, commencing with the calendar year in which the first construction obligation installment becomes payable, as provided in Article 19 (c) hereof, and each calendar year thereafter the District will pay in advance to the United States on or before January 1, upon estimates therefor to be furnished by the United States on or before September 1 next preceding, the estimated cost of operation and maintenance for such calendar year. The surplus of any amount so advanced by the District for operation and maintenance by the United States during any calendar year shall be credited on the estimated cost of operation and maintenance by the United States during the succeeding calendar year.

(b) Whenever in the opinion of the contracting officer the amounts available from payments made by the District of the estimated annual operation and maintenance charges will be inadequate properly to operate and maintain the distribution system to the end of any calendar year, he may give written

notice to the District, herein styled supplemental operation and maintenance charge notice, stating therein the amount of additional advance payment of funds required for such operation and maintenance, and the District shall pay the amount thereof on or before the dates specified in such supplemental operation and maintenance charge notice.

(c) Any amount of said operation and maintenance payments by the District remaining unexpended and unobligated in the possession of the United States on the effective date of a transfer in whole or in part of the distribution system to the District for operation and maintenance, in accordance with Article 22 hereof, shall be refunded to the District.

(d) To the extent that the distribution system is operated and maintained by the United States, there shall be included as a part of the operation and maintenance costs, as covered by the provisions of this article, such items for administration, supervision, inspection, replacement, and general expenses as properly are chargeable to such work in the opinion of the contracting officer.

TRANSFER OF OPERATION AND MAINTENANCE
TO DISTRICT - UNITED STATES TO BE HELD HARMLESS

22. (a) On January 1 following the calendar year in which the construction cost notice is given to the District as provided in Article 19 hereof, the District shall take over and at its own expense operate and maintain the distribution system or any part thereof described in the transfer notice. The District agrees to accept, upon the effective date of the transfer notice, the care, operation, and maintenance of the transferred works and thereafter, without expense to the United States, to care for,

operate and maintain the transferred works and deliver water therefrom in full compliance with the Federal reclamation laws, the regulations of the Secretary now and hereafter made thereunder, the terms of this contract, and in such manner that said works shall remain in as good and efficient condition for the development, diversion, and distribution of the aforesaid water supply as on the effective date of such transfer to the District. At any time prior to full payment of the construction obligation that the contracting officer determines that the District has not cared for, operated, maintained, or delivered water from the transferred works in the manner as aforesaid, the United States may take back and operate and maintain such works, and the District hereby agrees to surrender possession of said works. The works so taken back for operation and maintenance by the United States may similarly be retransferred to the District, and the District hereby agrees to accept the retransfer upon being given written notice similar in form to that described above. The District will use all proper methods to secure the economical and beneficial use of the water delivered by means of the distribution system.

(b) If any works are taken back by the United States at such time that funds for the operation and maintenance cannot be advanced in accordance with the procedure set forth in Article 21 hereof, the District hereby agrees, on the basis of statements of estimates to be submitted by the contracting officer, to advance sufficient funds to provide for the operation and maintenance of such works until such funds can be provided under the procedure set forth as aforesaid in Article 21 hereof.

(c) No substantial change in any of the transferred works shall be made by the District without first obtaining the written consent of the

contracting officer. The District shall make promptly any and all repairs to the transferred works which, in the opinion of the contracting officer, are deemed necessary for the proper care, operation, and maintenance of the same. If at any time, in the opinion of the contracting officer, any part of the transferred works shall from any cause be in a condition unfit for service, he may order that the water be turned out and shut off from that part of the distribution system until, in his opinion, such property is put in proper condition for service. In the event the District neglects or fails to make such repairs, the United States may cause the repairs to be made and may charge the cost therefor to the District, which charge the District shall pay in the manner provided in Article 23 hereof. The District shall provide for the collection of sufficient operation and maintenance or toll charges to pay all such bills to the United States within the time stated herein in addition to providing the necessary funds to meet the other obligations of the District.

(d) The United States may cause to be made from time to time, but in any event no more than three times per year, a reasonable inspection of the transferred works to ascertain whether the terms of this contract are being executed by the District. Such inspection shall include examination of the transferred property and of the books, records, and papers of the district together with examinations in the office of the Bureau of Reclamation of all contracts, papers, plans, records, and programs connected with the said property. The actual expenses of such inspections and examinations shall be paid by the District to the United States in the manner provided in Article 23 hereof.

(e) No liability shall accrue against the United States, its officers and employees because of damages caused by the operation of the distribution system by the District.

DISTRICT TO PAY CERTAIN MISCELLANEOUS COSTS RELATING TO TRANSFERRED WORKS

23. In addition to the other payments to be made by the District as provided by this contract, the District shall pay to the United States, on or before April 1 of the calendar year following that in which the same shall have been incurred and a statement thereof furnished by the United States, the following costs:

(a) Such items of cost incurred by the United States in connection with the distribution system for administration, supervision, and inspection during the time the distribution system is operated and maintained by the District and for the period covered by the statement:

(b) The cost of repairs to transferred works made by the United States as provided in Article 22 hereof.

COMPUTATION OF COSTS

24. The actual cost of the distribution system, which will constitute the District's construction obligation, shall embrace all expenditures of whatsoever kind in connection with, growing out of, or resulting from work performed in connection with the distribution system, including but not limited to the cost of labor, material, equipment, engineering, and legal work, superintendence, administration and overhead, rights-of-way, property

and damage of all kinds, and shall include all sums expended by the Bureau of Reclamation in surveys and investigations in connection with the irrigation of District lands, both prior to and after the execution of this contract, and the expense of all soil investigations and other preliminary work. The determination of what costs are properly chargeable hereunder, and the amount thereof shall conclusively be made by the contracting officer.

END OF PART B

AGREED CHARGES A GENERAL OBLIGATION OF THE DISTRICT

25. The District as a whole is obligated to pay to the United States the charges becoming due as provided in this contract notwithstanding the individual default in the payment to the District by individual water users of assessments, tolls or other charges levied by the District.

ALL BENEFITS CONDITIONED UPON PAYMENT

26. Should any assessment or assessments levied by the District against any tract of land or water user in the District and necessary to meet the obligations of the District under this contract be judicially determined to be irregular or void or should the District or its officers be enjoined or restrained from making or collecting any assessments upon such land or from such water user as provided for herein, then such tract shall have no right to any of the benefits of this contract, and no use shall be made of the distribution system nor any water made available by the United States pursuant hereto be furnished for the benefit of any such lands or water users, except upon the payment by the landowner of his assessment or a toll charge for the use of the distribution system or such water, notwithstanding the existence of any contract between the District and the owner or owners of such tract. Contracts, if any, between the District and the water users involving service from the distribution system or water fur-

nished pursuant to this contract shall provide that such use shall be subject to the terms of this contract. It is further agreed that the payment of charges at the rates and upon the terms and conditions provided for herein, is a prerequisite to the right to service from the distribution system or water furnished to the District pursuant to this contract; and no irregularity in levying taxes or assessments by the District, nor lack of authority in the District, whether affecting the validity of District taxes or assessments or not, shall be held to authorize or permit any water user of the District to demand or receive service or water made available pursuant to this contract, unless charges at the rates and upon the terms and conditions provided for herein have been paid by such water user.

LEVY OF TAXES AND ASSESSMENTS - FIXING OF RATES AND TOLLS

27. The District will cause to be levied and collected all necessary taxes and assessments and will use all of the authority and resources of the District, to meet its obligations hereunder, to make in full all payments to be made pursuant to this contract on or before the date such payments become due and to meet its other obligations under this contract. The District may, either or both, require the payment of toll charges or levy assessments for such water or service. All assessments levied by the District to meet the obligations accruing under this contract shall, unless otherwise determined by the board of directors of the District, be upon an ad valorem basis.

REFUSAL OF WATER IN CASE OF DEFAULT

28. No water or service shall be furnished to the District or by the District to or for the use of any lands or parties therein during any period

in which the District may be in arrears in the advance payment of operation and maintenance or toll or rental charges or for more than 12 months in the payment of construction charges accruing under this contract. No water or service shall be furnished to or by the District pursuant to this contract for lands or parties which are in arrears in the payment to the District of any assessments, rates, tolls, or rental charges of the District levied or established by the District and necessary for the purpose of raising revenues to meet the payment by the District to the United States of the District's obligation under this contract. The provisions of this article are not exclusive and action taken pursuant hereto shall not prejudice or preclude the United States from exercising any other remedy to enforce collection of any amounts due hereunder.

PENALTY UPON DELINQUENCY IN PAYMENT

29. Upon every installment of money required to be paid by the District to the United States pursuant to this contract which shall remain unpaid after the same shall have become due and payable, there shall be imposed a penalty of one-half (1/2) of one (1) percent per month of the amount of such delinquent installment from and after the date when the same becomes due until paid, and the District hereby agrees to pay said penalty: Provided, That no penalty shall be chargeable against the net amount of any adjustment made pursuant to Article 14 hereof.

DISTRICT TO KEEP BOOKS AND RECORDS AND REPORT CROP AND OTHER DATA

30. The District shall establish and maintain account and other books and records sufficient to enable it to furnish, in so far as the District is

permitted to do so by the laws of the State of California, to the Bureau of Reclamation reports and statements to such extent and in such manner and form as may be prescribed by the United States as to information pertaining to (a) accounts and financial transactions of the District, in so far as such information pertains to this contract and operations thereunder, (b) crops raised and agricultural and livestock products produced on the lands within the District, a report thereon to be furnished to the contracting officer annually on or before December 31.

INSPECTION OF BOOKS AND RECORDS

31. Subject to applicable Federal laws and regulations, the proper officers or agents of the District shall have full and free access at all reasonable times to the project account books and official records of the Bureau of Reclamation, in so far as the same pertain to the matters and things provided for in this contract, relating to the construction, acquisition, care, operation and maintenance of the distribution system, with the right at any time during office hours to make copies thereof, and the proper representatives of the United States shall have similar rights in respect to the account books and records of the District.

CHANGES IN ORGANIZATION OF DISTRICT

32. While this contract is in effect no change will be made in the District either by inclusion or exclusion of lands, by partial or total consolidation or merger with another district, by proceedings to dissolve, or otherwise, except upon the contracting officer's written assent thereto.

TITLE TO REMAIN IN THE UNITED STATES

33. Title to all of the project works, including the distribution system constructed by the United States pursuant to this contract, shall be

and remain in the name of the United States until otherwise provided for by the Congress, notwithstanding the transfer hereafter of any of such works to the District for operation and maintenance.

LAND NOT TO RECEIVE SERVICE FROM DISTRIBUTION SYSTEM OR WATER FURNISHED TO DISTRICT BY UNITED STATES UNTIL OWNERS THEREOF EXECUTE CERTAIN CONTRACTS

34. No water or service made available pursuant to this contract shall be furnished to any excess lands as defined in Article 36 hereof unless the owners thereof shall have executed valid recordable contracts in form prescribed by the United States, agreeing to the provisions of Article 34, 35, and 36 of this contract; agreeing to the appraisal provided for in Article 35 hereof and that such appraisal shall be made on the basis of the actual bona fide value of such lands at the date of the appraisal without reference to the construction of the project, all as hereinafter provided; and agreeing to the sale of his excess lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed as hereinafter provided. No sale of any excess lands shall carry the right to receive water or service made available pursuant to this contract unless and until the purchase price involved in such sale is approved by the contracting officer, and upon proof of fraudulent representation as to the true consideration involved in such sale the United States may instruct the District by written notice to refuse to furnish any water or service subject to this contract to the land involved in such fraudulent sales and the District thereafter shall not furnish said water or service to such lands.

VALUATION AND SALE OF EXCESS LANDS

35. (a) The value of the excess irrigable lands within the District, held in private ownership of large landowners as defined in the next succeeding

article hereof, for the purposes of this contract, shall be determined, subject to the approval thereof by the Secretary, by three appraisers. One of said appraisers shall be designated by the Secretary and one shall be designated by the District and the two appraisers so appointed shall name the third. If the appraisers so designated by the Secretary and the District are unable to agree upon the appointment of the third, the presiding justice of the Fourth District Court of Appeals of the State of California shall be requested to designate the third appraiser.

(b) The following principles shall govern the appraisal:

(i) No value shall be given such lands on account of the existing or prospective possibility of securing water or service from the distribution system.

(ii) The value of improvements on the land at the time of said appraisal shall be included therein, but shall also be set forth separately in such appraisal.

(c) The cost of the first two appraisals and each subsequent appraisal requested by the United States shall be paid by the United States.

(d) Any improvements made or placed on the appraised land after the appraisal hereinabove provided for prior to sale of the land by a large landowner may be appraised in like manner.

(e) Excess irrigable lands sold by large landowners within the District shall not carry the right to receive water or service made available pursuant to this contract for such land and the District agrees to refuse to furnish such water or service to land so sold until, in addition to compliance with the other provisions hereof, a verified statement showing the sale price upon any such sale shall have been filed with the District.

(f) The District agrees to take all reasonable steps requested by the contracting officer to ascertain the occurrence and conditions of all sales of irrigable land of large landowners in the District and to inform the United States concerning the same.

(g) A true copy of this contract and of each appraisal made pursuant thereto shall be maintained on file in the office of the District and like copies in such principal office of the Bureau of Reclamation as may be established hereafter in connection with the distribution system and shall be made available for examination during the usual office hours by all persons who may be interested therein.

EXCESS LANDS

36. (a) As used herein the term "excess land" means that part of the irrigable land within the District in excess of 160 acres held in the beneficial ownership of any single person, or in excess of 320 acres held in the beneficial ownership of husband and wife jointly, as tenants in common or by the entirety, or as community property; the term "large landowner" means an owner of excess lands and the term "nonexcess land" means all irrigable land within the District which is not excess land as defined herein.

(b) Each large landowner as a further condition precedent to the right to receive water or service made available pursuant to this contract for any of his excess land shall:

(i) Before any water is furnished by the District to his excess land, execute a valid recordable contract in form prescribed by the United States, agreeing to the provisions herein contained in

Articles 34, 35, and 36 and agreeing to dispose of his excess land in accordance therewith to persons who can take title thereto as nonexcess land as herein provided and at a price not to exceed the approved, appraised value of such excess land and within a period of ten years after the date of the execution of said recordable contract and agreeing further that if said land is not so disposed of within said period of ten years the Secretary shall have the power to dispose of said land subject to the same conditions on behalf of such large landowner; and the District agrees that it will refuse to furnish said water or service to any large landowner other than for his nonexcess land until such owner meets the conditions precedent herein stated.

(ii) Within thirty days after the date of notice from the United States requesting such large landowner to designate his irrigable lands under the project which he desires to designate as nonexcess land, file in the office of the District, in duplicate, one copy thereof to be furnished by the District to the Bureau of Reclamation, his written designation and description of lands so selected to be nonexcess land and upon failure to do so the District shall make such designation and mail a notice thereof to such large landowner, and in the event the District fails to act within such period of time as the contracting officer considers reasonable, such designation will be made by the contracting officer, who will mail a notice thereof to the District and the large landowner. The large landowner shall become bound

by any such action on the part of the District or the contracting officer and the District will furnish said water and service only to the land so designated to be nonexcess land. A large landowner may, with the consent of the contracting officer, designate land other than that previously designated as nonexcess land: Provided, That an equal acreage of the land previously designated as nonexcess shall, upon such new designation, become excess land thereafter subject to the provisions of Articles 34, 35, and 36 of this contract and shall be described in an amendment of such recordable contract as may have been executed by the large landowner in the same manner as if such land had been excess land at the time of the original designation.

(c) In the event that the Congress of the United States repeals the so-called excess-land provisions of the Federal reclamation laws, Articles 34, 35, and 36 of this contract will not longer be of any force or effect, or, in the event that the Congress amends the excess-land provisions of the Federal reclamation laws the United States agrees, at the option of the District, to negotiate amendments of Articles 34, 35, and 36 of this contract consistently with those provisions of the Federal reclamation laws as so amended.

CONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS

37. The expenditure of any money or the performance of any work by the United States herein provided for which may require appropriations of money by the Congress or the allotment of funds, shall be contingent upon such appropriations or allotments being made. The failure of the Congress so to appropriate funds or the failure of an allotment of funds shall not relieve the District from any obligations then accrued under this contract

and no liability shall accrue to the United States in case such funds are not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

38. 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 herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

NOTICES

39. Any notice or announcement which the provisions hereof contemplate shall be given to one of the parties hereto by the other shall be deemed to have been given if deposited in the United States Post Office, on the part of the United States in a franked envelope addressed to the District at its office and on the part of the District in a postage prepaid envelope addressed to the Bureau of Reclamation, Department of the Interior, Sacramento, California, or such other address as from time to time may be designated by the contracting officer in a written notice to the District: Provided, however, That this article shall not preclude the effective service of any such notice or announcement by other means.

ASSIGNMENT PROHIBITED: SUCCESSORS AND ASSIGNS OBLIGATED: DEFAULT

40. The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this contract or any part thereof or interest therein shall be valid until and unless approved by the United States. Any waiver at any time by either party to this contract of its rights with respect to

a default, or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any subsequent default or matter. All rights of action for breach of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States as amended (41 U.S.C. 15).

ASSURANCE RELATING TO VALIDITY OF CONTRACT

41. Promptly after the execution and delivery of this contract the District shall file and prosecute to a final decree, including any appeal therefrom to the highest court of the State of California, in a court of competent jurisdiction a special proceeding for the judicial examination, approval, and confirmation of the proceedings had for the organization of the District and the proceedings of the District Board of Directors and of the District leading up to and including the making of this contract and the validity of the provisions thereof, as provided for by Section 23225 of the Water Code of California (St. 1943, Ch. 368, Div. 11, Part 6, Chap. 2, Art. 3, Sec. 23225, approved May 13, 1943); and this contract shall not be binding on the United States until said District organization, proceedings, and contract shall have been so confirmed by a court of competent jurisdiction or pending appellate action if ground for appeal be laid.

PERFORMANCE OF WORK WITH CONTRIBUTED FUNDS

42. (a) Pursuant to the Act of Congress of March 4, 1921 (41 Stat. 1367, 1404), the United States will perform with funds contributed by the District any construction or maintenance work on the distribution system not otherwise provided for by this contract, or any construction work covered by this contract but for which funds may not be available: Provided, That the undertaking of any such work and the plans therefor must be approved by the

United States. When the undertaking of such work is approved, funds therefor shall be advanced by the District as may be directed by the contracting officer and there shall be submitted to the United States a certified copy of the resolution of the Board of Directors of the District describing the work to be done and authorizing its performance with contributed funds.

(b) After completion of any work so undertaken the District will be furnished with a statement of the cost thereof, and any unexpended balance of the funds will be refunded to the District or applied as otherwise directed by the District, and the amount by which the cost of such work exceeds the amount of the funds advanced by the District therefor shall be paid by the District to the United States as the contracting officer may direct.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their names the day and year hereinabove written.

THE UNITED STATES OF AMERICA

By _____

DISTRICT

By _____

(SEAL)

Attest:

_____

MEMO TO RAY B. WISER FEBRUARY 9, 1948

FROM CHARLES A. RUMMEL

Subject: Comments Concerning Contract Between The United States and the _____ District, Providing for Water Service and for the Construction of a Distribution System (Sacramento Office Draft, Dec. 17, 1947)

Pursuant to your request for my review of the above referred to contract, my comments are set forth below. I am particularly impressed by the "one-sidedness" of the contract, especially since a contract is generally considered to be in the nature of a mutual understanding.

Comment 1.

Preliminarily and before proceeding with the main criticism, it is noted in the explanatory recitals, and in particular Paragraph 7, that the District is required to state that it "desires that a general distribution and lateral system be constructed (which actually means reconstructed) for the District by the United States, acting by and through the Bureau of Reclamation, United States Department of Interior, pursuant to the Federal Reclamation Laws." (Reclamation Laws are defined to mean everything subsequent to June 17, 1902.)

Is it true that the District wants, and is it necessary for its laterals to be reconstructed at this time or from time to time, or is this recital merely "window dressing" to provide a means to establish 160-acre plots or such smaller plots as the Bureau might decree from time to time.

What reference is there in the contract to the practical impossibility of constructing irrigation laterals to conform to ownerships of land resulting from changes in land titles because of the deaths of owners or changes in their marital relations.

How can it be said that the District wants laterals and ditches to be constructed to produce 160 acre ownerships when the owners, in turn, must be governed by the crops they individually think profitable, considering the weather conditions and possibilities of rainfall.

In order to secure "supplemental water" and thus jeopardize the integrity of its plant, which has already been constructed and is in operation based on its prime source of water, can it be said in truth that the District "desires" the reconstruction.

Comment 2.

As noted above, the unilateral, one-way determinations which the contract provides for the Bureau seem to belie the word "contract" and establish the document as a government order providing for penalties of forfeiture. You will note the following provisions:

Pg. 4, para. 9 (j)	"as determined by the U.S."
Pg. 4, para. 11(a)	"as announced by the contracting officer"
Pg. 5, para. 11(a)	"announced by the contracting officer"
Pg. 5, para. 11(b)	"announced by the contracting officer"
Pg. 5, para. 11(b)(i)	"district not allowed to decrease its water requirements without consent"
Pg. 6, para. 11(b)ii(c)	Amount of Class 2 water available for delivery will be "as the same may be determined by the contracting officer"
Pg. 7, para. 12 (a)	Water delivery schedule shall be "satisfactory to the contracting officer"
Pg. 7, para. 12(a)	Change in time of water delivery shall be "as conclusively determined by the contracting officer"
Pg. 7, para. 12(b)	Permits no exchange of water "without written consent of the contracting officer"
Pg. 7, para. 12(b)	No water shall be delivered outside the district "without the contracting officer's written consent thereto"
Pg. 7, para. 13(a)	"The contracting officer will notify the District of the rates of payment to be made by the District"
Pg. 8, para. 13(c)	Payments shall be made in advance for water to be used at such date "as may be specified by the contracting officer"
Pg. 9, para. 14	The amount of overpayment, if any, is to be determined by the "contracting officer"
Pg. 10, para. 15(a)	The point of delivery shall be as fixed "in the conclusive determination of the contracting officer"

	Pb. 10, para. 15(b)	The water measuring device shall be "installed, operated and maintained by the U.S."
	Pg. 11, para. 15(c)	The U.S. specifically states it does not relinquish any <u>seepage</u> water.
	Pg. 11, para. 15(d)	No obligation to furnish water until completion of facilities "as conclusively determined by the contracting officer"
	Pg. 12, para. 16(a)	No Class 2 water shall be delivered until the "contracting officer shall have" made his determination.
	Page 12, para. 16(a)	The U.S. is freed of any claim for damage for water shortage on account of its "operations."
	Pg. 12, para. 16(a)	Water may be apportioned among several districts for Class 1 water in the "conclusive determination of the contracting officer"
	Pg. 14, para. 16(a)	No guarantee of sale of Class 2 water. Its availability is to be "conclusively determined by the contracting officer"
<u>Part B</u>	Pg. 16, para. 18 (b)	The general distribution and lateral system is to be deemed <u>complete</u> when the money specified in the contract has been expended or so much thereof "as the contracting officer considers necessary and useful"
	Pg. 17, para. 19(b)	The District must surrender on "request of contracting officer" without cost any lands needed for rights of way.
	Pg. 17, para. 19(b)	District is required to purchase at its expense with title in the U.S. all necessary easements and rights of way at prices "satisfactory to the Secretary"
	Pg. 17, para. 19(c)	The "construction cost" shall be conclusively determined by the contracting officer.
	Pg. 19, para. 20(a)	The "contracting officer may at his discretion require the payment of a service charge <u>even though water is not used</u>"
	Pg. 19, para. 20(a)	A minimum service charge to be paid in advance on lands being served "as conclusively determined by the contracting officer" may be charged.

Pg. 20, para. 21(b)	If amounts available from payments by District for estimated annual operation and maintenance charges are inadequate "in opinion of the contracting officer" the District shall pay the additional costs.
Pg. 21, para. 21(d)	If distribution system is operated by U.S. the operation and maintenance costs will include such items as administration, supervision, inspection, replacement and general expenses as "in the opinion of the contracting officer are properly chargeable"
Pg. 22, para. 22(c)	Even after the transferred laterals are paid for no substantial change can be made in them "without written consent of the contracting officer"
Pg. 23, para. 22(c)	Even after the project is paid for the District must make prompt repairs of a kind deemed necessary "in the opinion of the contracting officer"
Pg. 23, para. 22(c)	Even after the project is paid for the water can be shut off if"in the opinion of the contracting officer" the project shall from any cause be in a condition unfit for service.
Pg. 23, para. 22(d)	The policing of the District shall be made by the U.S. at the cost of the District, which shall submit its properties and books to the U.S. at least three times each year.
Pg. 24, Pg. 25, para. 24	The computation of costs of the distribution system are defined as including but not limiting such costs, and the cost is determined conclusively "by the contracting officer"
Pg. 28, para. 32	No changes can be made in a district by including or excluding lands, consolidation or proceedings to dissolve except with "the contracting officer's written consent"
Pg. 29, para. 34	No water or service shall be made available to excess lands unless an agreement is made to dispose of the excess lands under "terms and conditions satisfactory to the Secretary"
Pg. 29, para. 34	No sale of excess land shall carry right to receive water pursuant to the contract unless purchase price is approved by the contracting officer.
Pg. 29, para. 35(a)	The value of any excess land holdings will be determined subject to final approval by "the Secretary"

Pg. 32, para. 36(b)ii	In the event a District does not separate the excess from the non-excess land within a period of time considered reasonable by the "contracting officer" such designation will be made by "the contracting officer"
Pg. 25, para. 26	Even though a District has a prime source of water and the water furnished by the Bureau is admittedly "supplemental water," <u>its use in part will</u>, <u>nevertheless</u>, <u>cause all land embraced in the District to be subjugated to the policy of the contracting officer</u>.

Comment 3.

Apart from the one-sidedness of the contract as exemplified by the pertinent provisions which seem to rest within the discretion of the "contracting officer," the following dictatorial mandates are noted in the contract:

Pg. 26, para. 26	The existing agreements between the water users and district are in effect abrogated.
Pg. 26, para. 27	Districts are required to collect assessments to meet their obligations under the contract.
Pg. 27, para. 28	No water will be furnished unless paid for in advance.
Pg. 27, para. 29	Penalties for delinquent installments at the rate of one-half of one percent a month are provided for.
Pg. 27, para. 30	The District shall maintain its accounts and records in a manner to satisfy the U.S.
Pg. 28, para. 31	The agents of the district can inspect the district's books at any time and make copies thereof.
Pg. 29, para. 33	Even though the project is fully paid for by the District and all obligations of the District are met, the Congress of the U.S. must pass a law transferring each separate project work to the District.

<u>Comment 4.</u>

The most galling provision is set forth in paragraph 33, page 29, where it is provided that even though the project is fully paid for by the District and all obligations of the District as to terms and conditions are met, and its operations and books have been policed, the United States does <u>not</u> undertake to transfer anything to the District, but the transfer, if it is to be made at all, must be provided for by separate act of some future Congress, perhaps 10, 20, 30 or 40 years hence, if and when the completion of the project is conclusively determined by some "contracting Officer" who may not even yet be born. His conclusive determinations may well establish the very pattern of life of the children of the present occupants. The unjustness of this provision seems too obvious to point out.

ASSIGNMENT OF UNAPPROPRIATED WATERS OF SACRAMENTO RIVER

WHEREAS, under and by virtue of the provisions of an Act of the Legislature of the State of California, entitled "An act authorizing the Department of Finance to appropriate waters in connection with the utilization and conservation of the water resources of the state in the development of a general or coordinated plan; authorizing the State Department of Finance to release or assign such appropriations; authorizing the State Department of Finance to request other departments of the state or state officers to furnish services or assistance to make investigations in connection with the development of a general or coordinated plan for the utilization or conservation of the water resources of the state", approved April 29, 1927, being Chapter 286, Statutes of 1927, page 508, the State Department of Finance is directed and authorized, pursuant to the provisions of the Water Commission Act and the rules and regulations of the Division of Water Resources of the Department of Public Works, to make and file an application or applications for any water or the use thereof which in the judgment of the State Department of Finance is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California; and

WHEREAS, pursuant to the provisions of the aforesaid act, the State Department of Finance did, on the 30th day of July, nineteen hundred twenty-seven, file with the Division of Water Rights of the Department of Public Works of the State of California, those certain applications for permits to appropriate unappropriated waters of the Sacramento River, designated therein as Applications Nos. 5625 and 5626; and

WHEREAS, pursuant to the provisions of the aforesaid act, as amended, the State Department of Finance did, on the 2nd day of August, nineteen hundred thirty-eight, file with the Division of Water Resources of the Department of Public Works of the State of California, those certain applications for permits to appropriate unappropriated waters of the Sacramento River, designated therein as Applications Nos. 9364 and 9365; and

WHEREAS, the aforesaid Act of April 29, 1927, as amended by the act approved June 12, 1931, being Chapter 720, Statutes of 1931, page 1513; the act approved May 24, 1933, being Chapter 537, Statutes of 1933, page 1425; and the act approved July 15, 1935, being Chapter 462, Statutes of 1935, page 1518; provides, among other things, (a) that notwithstanding anything in said act contained, the State Department of Finance shall have power, in its discretion, to release from priority or to assign any portion of any of the appropriations that may be filed under the provisions thereof when such release or assignment is for the purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the state, and (b) that no such priority shall be released or assignment made of any such appropriation that will, in the judgment of the State Department of Finance, deprive the county in which such appropriated water originates, of any such water necessary for the development of such county; and

WHEREAS, the United States of America is now engaged in the construction of that certain project known as and designated the Central Valley Project, California, a part of a general or coordinated plan for the development,

utilization and conservation of the water resources of the State of California and which project was authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115), and the First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), and reauthorized by Act of Congress approved August 26, 1937 (50 Stat. 844), and has requested the State Department of Finance to assign to the United States for the use and benefit of said project all right, title and interest in and to the said Applications Nos. 5625, 5626, 9364 and 9365, and such appropriations of the waters of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder:

NOW, THEREFORE, in pursuance of the discretion and judgment vested in it by the aforesaid act of April 29, 1927, as amended, the State Department of Finance, being fully advised in the premises, does hereby find and determine (a) that the assignment of the United States in the form and substance hereinafter made, of the aforesaid Applications Nos. 5625, 5626, 9364 and 9365, and such appropriations of the water of said river as were made thereby, and all right, title and interest therein and thereto, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder for the use and benefit of said Central Valley Project, California, is for a purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California, but is in furtherance thereof, and (b) that said assignment, in the form and substance hereinafter made, of the aforesaid applications will not, in the judgment of the State Department of Finance, deprive any county in which such appropriated water originated, of any such necessary water for the development of such county; and

The State Department of Finance, in consideration of the foregoing and of the general benefits to accrue to the State of California from the construction by the United States of America of the Central Valley Project, California, established and authorized as aforesaid, does hereby transfer, assign, and set over to the United States of America, and its assigns, for the use and benefit of said Central Valley Project, California, all its right, title and interest in and to the aforesaid Applications Nos. 5625, 5626, 9364 and 9365, and such appropriations of the water of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder, subject to depletion of the stream flow above Shasta (formerly Kennett) Dam by the exercise of lawful rights to the use of water for the purpose of development of the counties in which such water originates, whether such rights have been heretofore or may be hereafter initiated or acquired, such depletion not to exceed in the aggregate four million five hundred thousand (4,500,000) acre-feet of water in any consecutive ten-year period, and not to exceed a maximum depletion in any one year in excess of seven hundred thousand (700,000) acre-feet.

IN WITNESS WHEREOF, the Department of Finance of the State of California, acting by and through the Director of Finance, has caused this assignment to be executed this 3rd day of September, A.D., nineteen hundred thirty-eight.

DEPARTMENT OF FINANCE OF THE
STATE OF CALIFORNIA

By ARLIN E. STOCKBURGER
Director of Finance

(Duly acknowledged.)

ASSIGNMENT OF UNAPPROPRIATED WATERS OF SAN JOAQUIN RIVER

WHEREAS, under and by virtue of the provisions of an Act of the Legislature of the State of California, entitled "An Act authorizing the Department of Finance to appropriate waters in connection with the utilization and conservation of the water resources of the state in the development of a general coordinated plan; authorizing the State Department of Finance to release or assign such appropriations; authorizing the State Department of Finance to request other departments of the state or state officers to furnish services or assistance to make investigations in connection with the development of a general or coordinated plan for the utilization or conservation of the water resources of the State," approved April 29, 1927, being Chapter 286, Statutes of 1927, page 508, the State Department of Finance is directed and authorized, pursuant to the provisions of the Water Commission Act and the rules and regulations of the Division of Water Resources of the Department of Public Works, to make and file an application or applications for any water or the use thereof, which in the judgment of the State Department of Finance is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California; and

WHEREAS, pursuant to the provisions of the aforesaid act, the State Department of Finance did, on the 30th day of July, nineteen hundred twenty-seven, file with the Division of Water Rights of the Department of Public Works of the State of California, those certain applications for permits to appropriate unappropriated waters of the San Joaquin River, designated therein as Applications Nos. 5637 and 5638; and

WHEREAS, pursuant to the provisions of the aforesaid act, as amended, the State Department of Finance did, on the 2nd day of August, nineteen hundred thirty-eight, file with the Division of Water Resources of the Department of Public Works of the State of California, that certain application for permit to appropriate unappropriated waters of the San Joaquin River, designated therein as Application No. 9369; and

WHEREAS, the aforesaid Act of April 29, 1927, as amended by the act approved June 12, 1931, being Chapter 720, Statutes of 1931, page 1513; the act approved May 24, 1933, being Chapter 537, Statutes of 1933, page 1425; and the act approved July 15, 1935, being Chapter 462, Statutes of 1935, page 1518, provides among other things, (a) that notwithstanding anything in said act contained, the State Department of Finance shall have power, in its discretion, to release from priority or to assign any portion of any of the appropriations that may be filed under the provisions thereof when such release or assignment is for the purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State, and (b) that no such priority shall be released, or assignment made of any such appropriation that will, in the judgment of the State Department of Finance, deprive the county in which such appropriated water originates, of any such water necessary for the development of such county; and

WHEREAS, the United States of America is now engaged in the construction of that certain project known as and designated the Central Valley Project,

California, a part of a general or coordinated plan for the development, utilization and conservation of the water resources of the State of California and which project was authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115), and the First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), and reauthorized by Act of Congress approved August 26, 1937 (50 Stat. 844), and has requested the State Department of Finance to assign to the United States for the use and benefit of said project all right, title and interest in and to the said Applications Nos. 5637, 5638 and 9369, and such appropriations of the waters of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder;

NOW, THEREFORE, in pursuance of the discretion and jugment vested in it by the aforesaid act of April 29, 1927, as amended, the State Department of Finance, being fully advised in the premises, does hereby find and determine (a) that the assignment to the United States, in the form and substance hereinafter made, of the aforesaid Applications Nos. 5637, 5638, and 9369, and such appropriations of the water of said river as were made thereby, and all right, title and interest therein and thereto, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder for the use and benefit of said Central Valley Project, California, is for a purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California, but is in furtherance thereof, and (b) that said assignment, in the form and substance hereinafter made, of the aforesaid applications will not, in the judgment of the State Department of Finance, deprive any county in which such appropriated water originates, of any such water necessary for the development of such county; and

The State Department of Finance, in consideration of the foregoing and of the general benefits to accrue to the State of California from the construction by the United States of America of the Central Valley Project, California, established and authorized as aforesaid, does hereby transfer, assign and set over to the United States of America, to be exercised by and through its Bureau of Reclamation, for the use and benefit of said Central Valley Project, California, all its right, title and interest in and to the aforesaid Applications Nos. 5637, 5638, and 9369, and such appropriations of the water of said river as were made thereby and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder.

IN WITNESS WHEREOF, the Department of Finance of the State of California, acting by and through the Director of Finance, has caused this assignment to be executed this 30th day of September, A.D., nineteen hundred thirty-nine.

DEPARTMENT OF FINANCE OF THE
STATE OF CALIFORNIA,

PHIL D. GIBSON,
Director of Finance

By George Killion (Signed)
GEORGE KILLION,
Deputy

(Duly acknowledged)

APPLICATIONS FILED BY DEPARTMENT OF FINANCE
Chapter 286, Stats. 1937, as amended

No.	Date	Source	Amount of Application Direct	Amount of Application Storage	Purpose	Place of Use
5625	7/30/27	Sacramento	11,000 S.Ft.	3,190,000 A.Ft.	Power	Sec. 15, T33N,R5W
5626	7/30/27	Sacramento	8,000	3,190,000	Irrigation,domestic use,saline,flood control,navigation	2,500,000 acres in Sacto. & San Joaquin Valley floor
9364	8/2/38	Sacramento	9,000	3,000,000	"	2,500,000 acres in Sacto.& San Joaquin Val. floors & Sacto-S.J. Delta & Solano & CC Counties
9365	8/2/38	Sacramento	7,000	3,310,000	Power	Sec.15, T33N,R5W
5637	7/30/27	San Joaquin R.	4,500	1,210,000	Power	Sec.24, T10S,R21E
5638	7/30/27	San Joaquin R.	5,000	1,210,000	Irrigation,domestic use & flood control	900,000 acres in San Joaquin Valley floor
9369	8/2/38	San Joaquin R.		2,000,000	"	"
9368	8/2/38	Delta-Sacto-San Joaquin	4,000		Irrigation and domestic use	900,000 acres in San Joaquin Valley floor

(Assigned to U.S.A.)

EXCERPTS
FROM HEARINGS BEFORE THE SUBCOMMITTEE
OF THE
COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES

FEBRUARY 25, 1947 and MARCH 4, 1947

(p. 210)

MR. WARNE. "On the Central Valley Project, Mr. Gore, there is a certain type of contract which we choose to call for reasons I suppose, of obfuscation, the "9 (e) contract," which does run for a 40-year period, and will then be renewed, and in effect we get there a continuing revenue from the project. That 9 (e) refers to a section of the 1939 Reclamation Project Act. That contract extends over a period of 40 years and then is renewable, presumably. At least, it does not terminate the obligation to repay at the end of 40 years. Through the use of that contract we do have the opportunity to gain repayment over a longer period, and in accord with the benefits that are given after 40 or more years have passed."

"There is a good deal of opposition to that kind of contract in the west. Some would like to have a termination date on repayments. But for good reasons, in the Central Valley area, and in the Missouri River Basin area, that contract is being used by the Bureau with certain of the repayment entities."

MR. GORE. "Would you mind bringing me one of those contracts tomorrow?"

MR. WARNE. "I filed one with the committee on the first day we were here. It is the Contra Costa contract. We have others and I will give you a copy. I think it is a forward looking kind of financial arrangement for this heavy cost type development."

MR. GORE. "Has the Bureau ever considered irrigation water and the supplying of irrigation water as a utility?"

MR. WARNE. "In effect, that is what we do when we go to the 9 (e) contract, you supply the water as a service to the irrigator rather than as a proposition by which he repays the cost of the project. That runs into problems as to water rights. You probably recognize that out in the west, ofttimes, the right to use the water on the land is more valuable than the land itself. The contest over water rights is pretty severe."

MR. GORE. "And yet that valuable right is so valuable that it is more valuable than the land adjacent to it."

MR. WARNE. "On which the water is used."

MR. GORE. "We suddenly, after the pay-out, disclaim any further interest in it."

MR. WARNE. "Our purpose, our fundamental objective in reclamation is to settle people permanently on the land through the use of the water in irrigation of the lands."

"When the settler has established water rights through full repayment--he gets his water right at the conclusion of the repayment period under the usual

(Note: Underscoring supplied)

contract--we sign nice little documents with big red seals on them and they go out to those people and those are evidences of the water right."

MR. GORE. "Instead of so many nice little documents, let me suggest that under present conditions you give more thought to the extension of service to the individual citizen, and let them pay their way."

MR. WARNE. "That is the purpose of this 9 (e) contract."

(p. 734)

Discussion of Sale of Water on Service or Utility Basis

MR. GORE. "In the contract, on the Central Valley, with the water users, you are embarking upon the new interpretation, as I read your contract, and that is for the first time you are considering the furnishing of water as a utility."

MR. STRAUS. "That is correct. The interpretation is the exercise of a section of the 1939 act for the first time which permits us to sell water on a service or utility basis without vesting a permanent water right. The contract can be made to run up to 40 years."

MR. GORE. "What is wrong with that? Why have you not been doing it heretofore?"

MR. STRAUS. "Nothing is wrong with it, in our opinion, otherwise we would not be doing it. We think it is the right thing to do, and it is clearly provided for by Congress in the 1939 act. The reason we have not been doing it before, and the reason you will hear some objections to it, too, Mr. Congressman, is that it does not invest a permanent water right in the recipient of the contract, it only assures him water for 40 years, after which some other arrangement must be made, which may be a renewal of the contract."

"It is only applicable for the repayment of the main supply works--that is, the reservoirs, dams, and main canals, and not for the distribution systems, and lateral systems. "

MR. GORE. "You mean after the cost of construction has been repaid, there will still be a charge for water which will produce some revenue to the project and to the Government?"

MR. STRAUS. "There can be. There is no provision or vested right at the 40 years ending covered by the contract. And that time of contract is limited by the Congress to 40 years."

MR. GORE. "I will ask you again, Why is it that the Department of the Interior has only now embarked upon that policy?"

"Why is it that other projects have not been---- "

MR. STRAUS. "We have not signed very many contracts since the 1939 act was passed. We had the war. We have not offered any new supplies of water, subject to contract, and that was not feasible before the 1939 act."

MR. GORE. "Is the policy of the Department from here on out to so regard the furnishing of water to users as a utility, and to so regard that operation and that function as to forestall the vesting of any private rights which would deny the Government the opportunity of deriving benefit and revenue from its investment after the cost of the project had been repaid?"

MR. STRAUS. "Let me answer by replying that it is the policy of the Government to offer this type of utility contract in the Central Valley throughout the Central Valley, and in the Missouri Valley, and we believe throughout the Missouri Valley, which are the only projects where we are confronted with the problem, or the only water we now propose to sell by contract. Those are the areas where we are now engaged in contract-making programs."

MR. GORE. "You are not prepared to say that that is now a general policy of the Department?"

MR. STRAUS. "No, I can imagine places where new water might become available where we already have contracts on adjoining divisions of a project under the old, or what is known as the 9 (d) form of contract where we would not want to put conflicting contracts side by each."

MR. GORE. "Are you prepared to say that that is the general policy with respect to new projects, not relating to the expansion of a project?"

MR. STRAUS. "It is the policy. Let me state positively, it is the policy in the great, major areas where we are now offering contracts, which is throughout the many States of the Missouri Valley, and in the Central Valley, and those are the only areas where we are now offering contracts, Congress has not repealed the old act. That still stands."

MR. GORE. "As between the new and the old, would you not think that the most recent determination reached by the Congress would have precedence?"

MR. WARNE. "Both the 9 (d) and 9 (e) forms of contract are provided for in the same act, the 1939 Reclamation Project Act, so there is no question about the most recent or elder pronouncement. They both appear in the same section of the act."

MR. GORE. "Under the 1939 act, is discretion solely vested in the Department to determine as to which type of contract will be executed?"

MR. WARNE. "Within certain limits. We cannot write a 9 (e) otherwise known as a water-service contract for the repayment of distribution systems. Distribution systems must be covered by a 9 (d) or a definite limit-pay-out-type of contract."

MR. GORE. "Coming back to you, Commissioner, is it contemplated that the 9 (e) type of contract will be utilized with respect to the Columbia Basin Project?"

MR. STRAUS. "No, the 9 (d) type of contract has already been executed with the three projects that embrace that 1,200,000 acres, 7 years ago; and the commitments were entered quite a while ago, ratified by district elections, and even a friendly test-court run on those contracts."

EXCERPTS FROM SPEECH BY WARNER W. GARDNER
ASSISTANT SECRETARY OF THE INTERIOR
BEFORE PROGRAM CONFERENCE OF THE
BUREAU OF RECLAMATION STAFF

WASHINGTON, D.C.

JANUARY 6-10, 1947

"There has, in the history of the Bureau, been no determined effort, or indeed, no very serious effort to enforce the 160-acre provision."

" In the Central Valley and in Missouri Basin you are experimenting with new forms of contract, the 9 (e) contracts in place of the traditional forms which have been used almost universally in the past. This means new problems in construction and obligations and new problems in the means of the salesmanship to the water users. I am extremely gratified that progress is being made in both areas in pushing through this work."

(Note: Underscoring supplied)

EXCERPTS OF QUESTIONS & ANSWERS TO WASHINGTON STATE FARM BUREAU ON COLUMBIA BASIN PROJECT

XII. IS IT CONTEMPLATED THAT THE SIZE OF FARMS SHOULD BE LIMITED TO LESS THAN 160 ACRES?

Answer: Yes.

XIII. IF THE ANSWER TO QUESTION NO. 12 IS "YES", WHAT ARE THE FACTORS WHICH WILL BE USED IN DETERMINING THE FARM SIZE?

Answer: Insofar as we have been able to ascertain, the following are the principle factors which will be used:

The Bureau of Agricultural Economics made studies of a large number of farms and farm families in Washington, Oregon, Idaho and some other states which showed that, on the average, these farm families began to make some savings or accumulation in assets when their income reached approximately $1100 per farm family per year. This income was segregated as follows:

Cash income	$626
Farm furnished food	289
Farm furnished house	109
Farm furnished fuel & ice	29
Total	$1053

This was taken as a base to comply with the "minimum accepted income" as provided for under the Columbia Basin Project Act. The B.A.E. then made studies to determine what had been the average price in the State of Washington of the various crops and livestock and livestock products which it is estimated will be produced on the project. These averages were determined for the 20-year period, 1920 to 1940. These were the farm prices used in their income compilations. Yields for the various crops and livestock in question were then calculated using the yields in Idaho, Yakima and Kittitas and Sunnyside and Owyhee Reclamation Projects adjusted to estimated differences in soil and climatic conditions. These yields then were taken as the estimated yields. Various farm plans were then developed showing dairy farms, livestock farms, crop farms, fruit farms, etc., and various combinations of these. These were then adjusted for size adding 20% to the minimum acceptable income bringing this to $1400 per year as an optimum income level.

These factors were then put together using man-hour tables as various requirements for different types of work. These tables were based on studies made in other irrigation projects in the Pacific Northwest. These combinations of factors then make up the main factors which will be used in determining the farm sizes on the Columbia Basin project.

-The regional office of the Reclamation Service at Ephrata has made the following additional comment to show the effect of present 1946 farm prices on income: "Based on a comparison of data for the period 1935-39 with that for 1946, there would now be required about $1900.00 to provide the same level of living provided in prewar years with

$1400.00. Prices for farm crops have increased more than costs, however, and the farm units proposed would actually provide about $2200.00 instead of $1400.00."

XIV. IN DEVELOPING THE FARM PLANS AND MAN-HOURS REQUIRED TO DO THE VARIOUS JOBS, HAVE THE TABLES, ETC., BEEN MADE ON THE BASIS OF HORSES AS THE FARM MOTIVE POWER?

Answer: Yes. In discussing this and studying the reports made by the committee on this factor, they state that horses were used as the base because the transition to tractor and motive power on the irrigated farms have been slower than on dry farms such as the wheat farming districts of eastern Washington and northern Idaho. This made it possible for them to gather production income expense figures over a long period of time on actual operating conditions. They further state that, by using horses as the motive power, they were able to secure better comparative analyses.

XV. WITH THE DEVELOPMENT OF NEW TYPES OF POWER MACHINERY AND EFFICIENT SMALL TRACTORS, DO YOU EXPECT MANY FARMERS WILL USE HORSES?

Answer: No. Most farmers will start with modern power machinery.

XXIII. WHAT ARE THE TOTAL CHARGES TO BE LEVIED AGAINST THE LAND FOR WATER?

Answer: Eighty-five dollars per acre. The total cost of the projects is considered to be an equivalent of a little more than twice this amount with the balance to be paid from sale of power. It is estimated that this charge will be distributed according to the land class as follows:

Class 1 land	$120.00
Class 2T land	100.00
Class 2S land	85.00
Class 3T land	60.00
Class 3S land outside of the pasture areas	40.00
Class 3S land in the pasture area	20.00

XXXIV. CONSIDERING THAT CALIFORNIA IS A DEFICIT AREA FOR SOME FARM CROPS AND COMMODITIES, WHICH IT IS CONTEMPLATED WILL BE PRODUCED IN THE COLUMBIA BASIN IN SURPLUS QUANTITIES, AND THAT MODERN FARM MACHINERY OFTEN CHANGES THE SIZE OF FARM, WHICH IS AN EFFICIENT UNIT, DO YOU THINK IT IS NECESSARY, FROM A COMPETITIVE MARKETING STANDPOINT, FOR THE COLUMBIA BASIN PROJECT AND THE CENTRAL VALLEY PROJECT TO BE GOVERNED BY THE SAME LIMITATION OF SIZE OF FARM?

Answer: No satisfactory answer has been received as yet for this question. Discussion has brought out the fact that there are a number of factors to be weighed in considering it. Chief among these are:

(a) The Central Valley Project--consists of various types of land but can roughly be stated as containing about 750,000 acres of land which is now being irrigated or has been irrigated in the past and for which supplemental water is required and in varying amounts from only a small amount of supplemental water to almost a complete

supply of irrigation water. There is another 500,000 acres distributed over a wide area much of which is on the same farms as the irrigated land which is included in the lands above mentioned as needing supplemental water and in other places being bodies of land not now farmed but included in grazing land, etc.

California groups contend that, when their project was first developed, a bond issue was voted by the people of California. Then the Federal Government came into the picture in the middle '30's and agreed to participate in this project as a public works project. In 1937, in making a continuing appropriation for the project, Congress put it under the jurisdiction of the Reclamation Bureau and made the lands of the Central Valley Project subject to the basic act governing the Reclamation Bureau which limits land ownership, eligible to receive water, to 160 acres. California people further contend that they had no knowledge of this provision, before it was done, and request that, even though the dams under the Central Valley Project were built by the Bureau of Reclamation, that they should not be subject to this land ownership limitation provision of the Basic Reclamation Act. They also contend that about 25% of the land affected, is in farms larger than 160 acres. If the other 75% of the land gets irrigation, California groups contend that this will relieve the pressure on the underground water resources and the 25% of the land outside will pump from the underground and not have to carry any costs.

(b) Columbia Basin Project--A number of groups in the State of Washington are concerned over the competitive angles involved in having the vast body of land in the Central Valley Project brought into production in California under different types of land restrictions than are to prevail in the Columbia Basin Project. Columbia Basin Project has a ceiling of 160 acres with the Secretary given power to establish farm units as he may desire, ranging between 10 acres to 160 acres. The present indication is that farm units in this project will be established for the different classes of land as follows:

Classes	Acres	Acceptable Range
1	50	45 - 65
2T	55	50 - 70
2S	80	72.5 - 110
3T	90	80 - 120
3S	110	100 - 160

Landowners who held title to their land prior to May 27, 1937, may retain a unit or units of 160 irrigable acres regardless of land class. It will also be permissable for one person to increase his operating unit through rental up to 160 acres. Larger units may be operated by special permission of the Secretary of the Interior.

Since most of the farms will have more than one class of land in them, the above acreages have been calculated to establish equivalents in terms of No. 1 land. These equivalent factors are as follows, based upon their relationship to No. 1 land:

1	-	1.00
2T	-	0.91
2S	-	0.63
3T	-	0.56
3S	-	0.45

EXCERPT FROM 9-E CONTRACT PRESENTED TO

FRENCHMAN-CAMBRIDGE IRRIGATION DISTRICT OF NEBRASKA

May 29, 1947

"PROTECTION OF DISTRICT LANDS AGAINST DETERIORATION

"35. (a) In order to protect the lands within the District against deterioration because of the improper use of water, to protect the distribution works, and to assure the economical use of the irrigation water supply, the Secretary shall promulgate from time to time rules and regulations governing soil and moisture conservation practices to be followed on the lands in the District. Such rules and regulations may cover any or all practices which the Secretary determines, after consultation with the District's Board of Directors, to be consistent with the purposes of this Article, including but without limitation by reason of this enumeration, the construction where appropriate of intermediate head ditches, border strips, and such other irrigation structures as are designed to alleviate erosion and seepage conditions, and the use of appropriate methods of agriculture and irrigation such as crop rotation and contour irrigation.

"(b) The rules and regulations made pursuant to this Article may provide that the right of a water user to receive water is conditioned on compliance with practices required by such rules and regulations. Furnishing of water by the District under this contract shall be governed by such conditions.

"(c) The Secretary shall have the right at all reasonable times to go upon the lands in the District to determine whether the requirements of the rules and regulations are being met."

F A R M L O A N S A N D T H E 1 6 0 - A C R E L A W

The Position of Banks and other Lending Agencies
under the Land Limitation Provisions
of the Federal Reclamation Law.

REPORT OF THE SUBCOMMITTEE OF THE
STATEWIDE WATER RESOURCES COMMITTEE
of the
CALIFORNIA STATE CHAMBER OF COMMERCE

****

"This report may be briefly summarized by the statement that 43 U.S.C.A. #544 provides that any excess land acquired by a bank or lending agency by foreclosure of any lien within a Federal Reclamation Project may be held for two years and no longer ....."

San Francisco
February 13, 1948

February 13, 1948

Mr. Carl F. Wente, Chairman
Statewide Committee on Utilization
and Control of Water Resources
California State Chamber of Commerce
350 Bush Street
San Francisco 4, California

Dear Mr. Wente:

Under date of January 19, 1948, you appointed the undersigned as a sub-committee to draft a report to apprise banks and lending agencies of their standing under the land limitation provisions of the Reclamation Law when they become owners of more than 160 acres in an irrigation district which is receiving water from a Federal reclamation project.

We find that the matter is fully covered by Section 3 of the Act of August 9, 1912, the relevant part of which has been codified as 43 U.S.C.A. #544, as follows - the most important part for our purposes being underscored by us:

> "#544. Limitation as to holdings prior to final payment of charges: forfeiture of excess holding. No person shall at any one time or in any manner, except as hereinafter otherwise provided, acquire, own, or hold irrigable land for which entry or water-right application shall have been made under the said reclamation law, before final payment in full of all installments of building and betterment charges shall have been made on account of such land in excess of one farm unit as fixed by the Secretary of the Interior as the limit of area per entry of public land or per single ownership of private land for which a water right may be purchased respectively, nor in any case in excess of one hundred and sixty acres, nor shall water be furnished under said law nor a water right sold or recognized for such excess; but any such excess land acquired at any time in good faith by descent, by will, or by foreclosure of any lien may be held for two years and no longer after its acquisition; and every excess holding prohibited as aforesaid shall be forfeited to the United States by proceedings instituted by the Attorney General for that purpose in any court of competent jurisdiction. The above provision shall be recited in every patent and water-right certificate issued by the United States under the provisions of the three preceding sections."

In two instances the Department of the Interior has held that irrigation districts and water users' associations may acquire excess lands in satisfaction of their liens and are not required by 43 U.S.C.A. #544 to dispose thereof within two years, but that they must, however, dispose of excess lands so acquired within a reasonable time. Glenn L. Kimmel and Goshen Irr. Dist., 53 I.D.658; James P. Balkwill, 55 I.D.241.

There has been no ruling by the Department extending to banks and lending agencies the privileges accorded to irrigation districts and water users' associations by the above-cited decisions. It is our belief that the Department has no authority to grant to banks and lending agencies any extension beyond the two-year period provided in Section 544.

In your letter you use the expression: "when they become owners of more than 160 acres in an irrigation district which is receiving water from a Federal reclamation project." (Emphasis supplied.) In our opinion, the territory to be considered is that within the entire project and not the more limited area comprised within an irrigation district or represented by a water users' association, either of which may be one of a number of similar organizations operating within a single project. This is notably true of the Central Valley Project.

This report may be briefly summarized by the statement that 43 U.S.C.A. #544 provides that any excess land acquired by a bank or lending agency by foreclosure of any lien within a Federal Reclamation Project may be held for two years and no longer after its acquisition.

Respectfully submitted,

A. E. CHANDLER, Attorney, Chairman
Athearn, Chandler & Farmer
San Francisco

EDSON ABEL, Attorney
California Farm Bureau Federation
Berkeley

W. R. BAILEY, Attorney
Visalia

BURNHAM ENERSEN, Attorney
McCutchen, Thomas, Matthew, Griffiths & Greene
San Francisco

S. T. HARDING, Consulting Engineer
Professor of Irrigation
University of California
Berkeley

80th Congress
1st Session

S. 912

IN THE SENATE OF THE UNITED STATES

March 17 (legislative day, February 19), 1947

Mr. Downey (for himself, Mr. Knowland, Mr. Johnson of Colorado, Mr. Millikin, Mr. Connally, and Mr. O'Daniel) introduced the following bill; which was read twice and referred to the Committee on Public Lands

- - - - - - - - - - - -

A BILL

Exempting certain projects from the land-limitation provisions of the Federal reclamation laws and repealing all inconsistent provisions of prior Acts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, as used in this Act ---

(a) The term "Federal reclamation laws" shall mean the Reclamation Act of June 17, 1902, and all Acts amendatory thereof or supplementary thereto;

(b) The term "public lands" shall mean all lands of the United States subject, or which may be made subject, to entry and settlement pursuant to the public-land laws of the United States;

(c) The term "private lands" shall mean all lands other than public lands as defined herein.

(d) The term "land-limitation provisions" shall mean all provisions of the Federal reclamation laws (1) limiting irrigable private lands held by any one owner; (2) relating to appraisal and sale of private lands held in excess of such limitations; (3) denying, prohibiting, or restricting the delivery of water to private lands held in excess of such limitations or the right to receive water for such lands; and (4) relating to residence and occupancy.

SEC. 2. The land-limitation provisions shall not apply to any private lands, to the delivery of project water supply to private lands, or to any contract relating to project water supply for private lands, susceptible of irrigation with any water supplied from or made available by any project hereinafter named. No benefit of the Federal reclamation laws shall ever be denied because of the size of any holding of private lands within or served by any of the hereinafter-named projects.

SEC. 3. This Act shall apply to the following supplemental water projects:

San Luis Valley project, Colorado.

Valley Gravity Canal project, Texas.

Central Valley projects, California.

SEC. 4. Any and all Acts and parts of Acts in conflict herewith are hereby repealed: Provided, That any and all Acts and parts of prior Acts not in conflict with the provisions of this Act shall remain in full force and effect.

80th Congress
1st Session

H. R. 3194

IN THE HOUSE OF REPRESENTATIVES

April 24, 1947

Mr. D'Ewart introduced the following bill; which was referred to the Committee on Public Lands

- - - - - - - - - - - - - - - -

A BILL

To amend the Reclamation Project Act of 1939.

SEC. 2. Section 9 of the Reclamation Project Act of 1939 is amended by adding thereto subsection (f) reading as follows:

"SEC. 9. (f) As an alternative to any other contractual arrangement with the Secretary for the delivery of water for irrigation to any part of a project area authorized by law, including the construction of any distribution system necessary to such delivery, any organization empowered to engage in the distribution of water for the irrigation of any area or any part of an area for the irrigation of which a project has been authorized, has received an appropriation, is under construction, or has been constructed and with which a repayment contract has not been executed, may, at its option, obtain from the Secretary, who is hereby authorized and directed to negotiate the same, a repayment contract, which said contract shall provide for --

"(1) annual payments, which need not be equal, by the organization over a period of not to exceed fifty years after the first delivery of water to such organization so calculated as to return to the United States, without interest, an appropriate and proportionate share of the reimbursable cost of the project allocated to irrigation to be repaid by the water users, together with any construction cost incurred exclusively for any distribution system of the contracting organization: Provided, That such payments shall not be greater than those provided under any alternative form of contractual arrangement with the Secretary available to the contracting organization;

"(2) the quantities and classes of water to be delivered under such contract and the times and places agreed upon for such deliveries;

"(3) the vesting as appurtenant to the lands within the boundaries of the contracting organization of the perpetual right to use the water deliverable from such project to such organization: Provided, That all such rights shall vest in the manner and to the extent authorized by the laws of the State in which such irrigable lands are situated;

"(4) the time at which designated portions of the project facilities will be transferred to the contracting organization for the care,

operation, and maintenance: Provided, That all organizations receiving water under the same project shall be accorded equality of treatment in the transfer to them of project facilities for care, operation and maintenance: And Provided Further, That any such contracting organization upon the execution of a contract under this subsection, shall be entitled to take, for care, operation, and maintenance, all project facilities, including distribution systems, which serve it exclusively and shall be entitled, in conjunction with other organizations to take over all project facilities utilized jointly, for care, operation, and maintenance, as and when a suitable agency therefor has been created, all in accordance as nearly as may be, with the principles of subsection g of section 4 of the Second Deficiency Act, fiscal year 1924 (43 Stat. 702)."

No organization shall be required in any such contract to assume any obligation other than those specifically authorized by this Act and consistent with this subsection.

SENATOR WILLIAM F. KNOWLAND'S STATEMENT

IN THE

UNITED STATES SENATE

(Excerpts Thereof)

(From the Congressional Record - Senate - February 25, 1948
Pages 1734-1735)

(Note: Underscoring supplied)

"I am profoundly interested in the whole field of reclamation. I think that some of the most constructive work in the building of this Nation has been done in the past by the Reclamation Service of the Department of the Interior. But I want to say, Mr. President and Members of the Senate, that I have been shocked, as I have never been shocked before, to see the way in which an executive branch of the Government trifled with the Congress of the United States by giving misinformation to a congressional committee and indulging in misrepresentation and evasion.

"This body cannot perform its functions if branches of the executive department of the Government act in a way in which certain individuals in the Department of the Interior have acted before the Senate Committee on Appropriations.

"So that the record may be perfectly clear, I wish to present some facts to the Senate. I call attention to the fact that when the Appropriations Subcommittee on the Department of the Interior was discussing the appropriation last year it went into the question of the carry-over fund. I specifically call attention to the Central Valley item in the State of California. The Interior Department's Bureau of Reclamation had indicated to the House of Representatives and to the Director of the Budget that their carry-over would be approximately $10,000,000. Later on, due to pressing by the Committee on Appropriations itself, we found out that the fund was greatly underestimated. As a matter of fact, it turned out on June 30, last year, at the end of the fiscal year, that it amounted to a little more than $21,000,000. At the least, that indicated some very poor bookkeeping in the Interior Department.

"During the investigation which we have recently conducted we found that officials of the Interior Department's Bureau of Reclamation have had advices from the field, from the people who knew the full facts, prior to their testimony before our committee, to the effect that, in their judgment, the amount of the carry-over would be approximately $25,000,000. In spite of the fact that they had that information from those who were best able to give them competent information, they went before the Director of the Budget representing the President of the United States, and misrepresented the facts to him. They appeared before the House Committee on Appropriations and misrepresented the facts to that committee. They came before the Appropriations Committee of the Senate of the United States, and, in answer to direct questions which I myself propounded to them, they misrepresented the facts to our committee.

They knew at that time that the amount would be approximately double that which was testified to before our committee. We did not know at the time the bill was before the committee last year that they had that information. We ascertained in the hearings which we have recently conducted that a teletype had gone from California to the Bureau of Reclamation containing the statement that, in their judgment, the carry-over would be approximately $25,000,000.

"Mr. President, there may be some who say that the Congress of the United States did not give to the Reclamation Service the funds it should have. I certainly think it should have all the funds it can properly spend in developing the great western projects. I do not speak in any narrow sense, either from a partisan point of view or a geographic point of view, because I am as much interested in projects in other areas of the country as I am in those of my own State of California.

"I want to call attention to the official report of the program conference held in Washington, D. C., in 1947. It is an official document issued by the Bureau of Reclamation. Let us see what they said as to whether the Congress of the United States has discharged its obligation. I read from a speech by the Honorable J. A. Krug, Secretary of the Interior, appearing on page 2 of the document to which I have referred:

"'One of the most embarrassing things I have had to deal with -- and I think Mike --'

"Let me interpose to say that 'Mike' is Michael W. Straus of the Reclamation Bureau --

"'I think Mike is, too -- is that every time we go over to the Budget and talk about our desperate and dire need for money, they lay up to us that you boys are all sitting on the money bags, and never spending what you have.'

"He was talking to the Reclamation officials at the conference, and he went on to say:

"'There is a serious doubt that you are going to spend the money you have this year.'

"Further on he says:

"'I think that practically every single one of the regions has more money than it will be able to spend at the present rate of progress.'"

"Now, let me read from what Mr. Straus had to say. I read from page 21:

"'Neither lack of men nor money can explain in full our present problems, but we might as well discuss the money matter first, because you never let the Commissioner take his eye off of it in the Bureau of Reclamation.'

"Then further he said -- and I want Senators to pay particular attention to this:

"'This year we did not spend our money. Last year we did not spend our money. The year before we did not spend our money. We do not spend our money in peacetime and we do not spend our money in wartime.'

"Further he said:

"'Lack of money is not holding us back.'

"So when the charge is made that the Congress of the United States, either in the Seventy-ninth Congress or the earlier ones, or in the present Republican-controlled Congress, has not been treating the Reclamation Service fairly, I say that the words of the Service officials themselves indicate that the charge is not true.

"I do not mean by that to imply that they are not in difficulties, but I think that in part the difficulties are of their own making.

"I wish to say to the able Senator from Vermont that I certainly hope that when he obtains the additional money for investigations he will give very careful study to building up a proper accounting system in the Government agencies, so that they will know their financial condition. If any business in the United States, large or small, operated so loosely or in such a way that it did not know where it stood from week to week and month to month, that business would go to the wall in a very short period of time.

"In the investigation of the Central Valley project in California we found that the Commissioner of Reclamation himself visited the Central Valley the month prior to the shut-down of the operations there, and as a matter of fact, within 2 weeks of the time when that great project was shut down the Commissioner of Reclamation himself did not know that it was going to be closed down. Can Senators imagine a business operating under any such conditions?

"During the course of this investigation certain information was disclosed which had not been available to the committee at the time of the regular investigation a year ago, and I wish to read to the Senate a memo which was produced by my colleague the senior Senator from California (Mr. Downey) and placed in the committee record. This was a memorandum for all concerned, written by Mr. R. S. Calland, who is the deputy to Mr. Boke, in charge of the Central Valley project.

"'Subject: Means of effectuating the regional director's responsibilities for project programing and execution.

"'1. For reasons valid or otherwise, the construction program in the region has fallen far behind schedule. Because of failure to meet estimated progress large amounts of appropriated funds have remained unspent at fiscal year ends. This fact has brought severe criticism upon us from the Secretary of the Interior, the Commissioner, from members of congressional appropriations committees, and from others.

"'2. The heavy carry-over from the current fiscal year (1947) plus an appropriation in the order of amounts recently passed by the Senate and House of Representatives will give us a total of funds available for fiscal year 1948, which is far above that required to meet our current rate of spending.'

"Listen to this:

"'The Secretary and the Commissioner are insistent that 1948 funds be spent early in the year -- by January 1, if possible. The situation represents a challenge to our construction ability. The Bureau's reputation as a construction agency is literally at stake. As local custodians of this reputation all means at our command must be employed to meet this challenge.'"