

Date 18 June 1951

CONTRACT FOR RELOCATION, REARRANGEMENT,  
OR ALTERATION OF FACILITIES

CONTRACTOR AND ADDRESS: Natomas Water Company  
Forum Building  
Sacramento, California

CONTRACT FOR: Rearrangement of the Natoma Canal and related  
facilities

LOCATION Folsom Reservoir Project, near Folsom, California

PAYMENT to be made by: Disbursing Officer  
Corps of Engineers  
1209 8th Street  
Sacramento, California

The supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the allotments below enumerated, the available balances of which are sufficient to cover the cost thereof:

21 X 3113 Flood Control, General

This contract is authorized by the following laws:

The Flood Control Act of 1944

Public Law 356, 81st Cong., 1st Sess.

Approved by authority of Chief of Engineers

/s/ E. Manning Seltzer

E. Manning Seltzer

Asst. Chief, Legal Division, OCE

CONTRACT FOR RELOCATION, REARRANGEMENT,  
OR ALTERATION OF FACILITIES

This contract entered into this 18th day of June 1951, by the United States of America (hereinafter called the Government) represented by the Contracting Officer executing this contract, and the Natomas Water Company, a corporation organized and existing under the laws of the State of California, of the City of Sacramento, in the State of California (hereinafter called the Contractor), WITNESSETH THAT:

WHEREAS, the Government has undertaken the development of a project for flood control, irrigation, and other purposes known as the Folsom Dam and Reservoir located at or near Folsom, California (hereinafter called the project); and

WHEREAS, the Contractor now is maintaining and operating, and for over seventy-five (75) years last past has maintained and operated, facilities for the diversion, transportation and distribution of water, consisting of a diversion dam, canals, ditches and appurtenances, which interfere with the use of the project by the Government; and

WHEREAS, the Contractor and the Government entered into contract No. DA-04-167-eng-116 for the temporary relocation, rearrangement or alteration of the facilities of the Contractor in order to eliminate interference with the construction of the project; and

WHEREAS, the Contractor possesses certain rights in and to the waters flowing in the South Fork of the American River, said rights being based on a filing in the records of the County of El Dorado, State of California, in 1851, subsequent diversion and usage in whole or in part continuously since that time, and by application and devotion of said rights and said water to beneficial use; and

WHEREAS, it is necessary for the completion of said project by the Government that the said facilities be removed or altered in order to accommodate the project; and

WHEREAS, the Contractor is agreeable to the removal or alteration of its facilities as herein provided in order to eliminate such interference, provided that the right of the Contractor to continue to use said water and to devote same to the public use is not lost or impaired; and

WHEREAS, said Contractor is entitled to full compensation for the taking of its property;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE 1. Obligations of the Contractor.

(a) The Contractor shall:

(1) Abandon all facilities of the Contractor, i.e., diversion dam, canals, ditches and appurtenances, lying northerly from the southerly limit of realty acquisition for the project, as indicated on Drawing No. AM-1-5-334, Revision No. 2, dated 20 March 1951, attached hereto and made a part hereof, upon commencement of delivery of water by the Government to the Contractor pursuant to Article 3 hereof.

(2) Obey and abide by all applicable laws and ordinances of the United States of America, of the State, Territory, or political subdivision thereof wherein the work is done, or of any other duly constituted public authority.

(3) Without additional consideration, convey to the Government by good and sufficient deed of conveyance all its right, title and interest in and to the real property lying within the realty acquisition line for the project as indicated on the drawing referred to in Article 1(a)(1) hereof, and at the same time deliver to the Government releases from all liens and encumbrances caused or suffered to be placed on said property by the Contractor except taxes and assessments not due or payable and easements or rights of way on the Contractor's right, title and interest conveyed to the Government. (In event the Contractor is vested with fee title, conveyance of fee title required, free and clear of all liens and encumbrances except taxes and assessments not due or payable and easements or rights of way.) It is understood and agreed that the foregoing provisions on conveyance by the Contractor shall not apply to any portion of that certain tract of land being the S.W. 1/4 of Section 25, T. 11 N., R. 8 E., M.D.B. & M., which is not occupied by operating facilities of the Contractor.

(b) All plans and specifications prepared by the Government incident to accomplishing the construction enumerated in Article 2 hereof shall be subject to the written approval of the Contractor or his authorized representative, it being expressly understood that none of said construction shall be initiated prior to said approval.

(c) Should it be determined by either of the parties hereto for any reason that the right, title and interest in and to the said real property mentioned in Article 1(a)(3) hereof shall be acquired by condemnation or other judicial proceedings, the parties hereto shall cooperate in the prosecution of the proceedings and this agreement shall, without more, constitute a stipulation which shall be filed in the proceedings and shall be final and conclusive evidence of the proper award to be made in such proceedings. It is understood and agreed that use of the Government's power of eminent domain pursuant to the foregoing shall be contingent upon and subject to the approval of the Secretary of the Army.

(d) The Contractor hereby grants to the Government the right to enter upon any or all of the lands owned or controlled by the Contractor for the purpose of constructing facilities pursuant to Article 2 hereof, said right to enter to terminate upon commencement of delivery of water by the Government to the Contractor pursuant to Article 3 hereof. It is understood and agreed that the Government while exercising the foregoing right to enter shall so conduct its activities that the flow of water through the facilities of the Contractor is not impaired or contaminated more than the absolute minimum necessary to accomplish the said construction.

(e) The Contractor hereby grants to the Government the right to enter upon the right of way of the Mormon Island Ditch for the purpose of constructing and maintaining the Mormon Island Auxiliary Dam of the project, said right to enter to become effective as soon as the Government owns or controls all lands served by said ditch and to terminate upon conveyance by the Contractor to the Government pursuant to Article 1(a)(3) hereof.

(f) The right, title and interest in realty cited in Article 1(a)(3) hereof shall not be conveyed to the Government by the Contractor before delivery by the Government to the Contractor of conveyances pursuant to Article 2(a)(5) hereof.

ARTICLE 2. Obligations of the Government.

(a) The Government shall:

(1) Make such surveys and prepare such plans and specifications as are reasonably necessary for the construction to be performed by the Government hereunder,

all of which shall be subject to the written approval of the Contractor pursuant to Article 1(b) hereof.

(2) Construct a gravity conduit, the ditch portions of which will be unlined except in porous or blocky strata which in the opinion of both of the parties hereto require lining to prevent excessive water loss, having a capacity of 60 cubic feet per second of water, extending from a point approximately 100 feet southeasterly from the easterly right of way line of the Green Valley Road to the Natoma Canal of the Contractor and located substantially as indicated on the drawing cited in Article 1(a)(1) hereof, complete with outlet works of 60 cubic feet per second capacity at said Natoma Canal, including a gate as required to fulfill existing service commitments of the Contractor between the said southerly limit of realty acquisition for the project and the site of said outlet works, turnout of 12 cubic feet per second capacity, located wherever the Contractor elects along said conduit, to serve the existing Folsom Ditch of the Contractor or the replacement facility therefor which may be constructed by the Contractor, and appurtenances.

(3) Transport and deliver water into the westerly end of the conduit to be constructed pursuant to Article 2(a)(2) hereof in accordance with Article 3 hereof.

(4) Obtain all interests in realty necessary for the construction by the Government and subsequent operation and maintenance by the Contractor of all facilities to be constructed by the Government pursuant to Article 2(a)(2) hereof, excepting any realty or interests therein owned by the Contractor as of the date of this contract which can be utilized for said construction and subsequent operation and maintenance.

(5) Subject to the approval of the Secretary of the Army, convey to the Contractor easements upon which to operate and maintain the facilities to be constructed by the Government pursuant to Article 2(a)(2) hereof; excepting, however, any realty or interests therein of the Contractor as cited in Article 2(a)(4) hereof.

(b) The Government agrees to deliver to the Public Utilities Commission of the State of California upon request by said Commission such necessary or required information as to costs incurred by the Government under this contract as is consistent with Government policy.

(c) The work to be performed by the Government under this Article shall be so coordinated with the operations of the Contractor as to minimize outages of and contamination of the water flowing in the Natoma Canal and Folsom Ditch. The government shall construct and operate shoofly conduits as necessary to by-pass the flow in said Natoma Canal and Folsom Ditch around construction to be performed by the Government within the limits of said canal and ditch, and in the event of interruption in the utility service required to be furnished by the Contractor under the terms of its franchise, occasioned by the occurrence of any event to the said shoofly conduits, not due to fault or negligence on the part of the Contractor, the Government shall provide temporary utility service during the period required to eliminate the cause of interruption.

ARTICLE 3. Possession and Delivery of Water. As hereinafter provided, the Government, without additional consideration, upon permanent closure of the by-pass conduit constructed in accordance with Contract No. DA-04-167-eng-116 between the Contractor and the Government shall deliver into the westerly end of the conduit to be constructed pursuant to Article 2(a)(2) hereof the water which the Contractor under the law and this contract is entitled to divert and have diverted from the South Fork of the American River. The Contractor represents and the Government recognizes that the Contractor possesses the right to divert amounts of water to 60 cubic feet per second of the waters of the South Fork of said river, such right being based on a filing in the records of the County of El Dorado, State of California, in 1851, subsequent diversion and use in whole or in part continuously since that time, and application and devotion of the waters so diverted to beneficial use. In preservation of such right and to insure the availability to the Contractor of the amount of water from the South Fork of the American River to which the Contractor is entitled by virtue of such right, the parties hereto agree as follows:

(a) The rate of delivery of water to the Contractor by the Government at any particular time shall not exceed 60 cubic feet per second.

(b) The total amount of water delivered to the Contractor by the Government in any one calendar year shall not exceed 32,000 acre feet.

(c) The Government, within the limitations established in (a) and (b) above and the further limitation that the water must be devoted to a beneficial use, shall deliver to the Contractor as much water as the Contractor may request. Requests by the Contractor for delivery shall be submitted to the Contracting Officer in writing. Requests covering the quantity and rate desired shall cover a calendar year by months, and shall be submitted not later than the first of December of the preceding year; provided, however, that the said rate may be amended at any time upon two days written notice, and in the event of emergency will be changed immediately.

Subject to the provisions of this contract, no interest in the water rights possessed by the Contractor shall be considered to have been transferred to the Government hereunder, and no storage space in Folsom Reservoir shall be considered as being involved in this contract, except to the minimum extent in each instance necessary to enable the Government to comply with the terms hereof and to provide at the times and in the quantities specified herein the water to be received by the Contractor and to which it is recognized the Contractor is entitled.

The terms "possesses," "possession," and "possessed by" as used with respect to water and water rights in this contract mean the act, fact, or condition of the Contractor having such control of said water or water rights that it may legally enjoy same to the exclusion of all third parties having no better claim than itself, and that when and if a court of competent jurisdiction by final judgment establishes the legal entitlements of the Contractor as against said third party or parties as being less than the amounts herein specified the covenant delineated in this Article shall be amended to conform to said entitlements.

ARTICLE 4. Ownership. The facilities constructed hereunder shall be or become the property of the Contractor.

ARTICLE 5. Interference. The Contractor agrees that so long as the project is operated or maintained for the purposes as described herein that the facilities as abandoned or altered pursuant to this contract shall not be so further altered or modified nor other facilities constructed by the Contractor, so as to interfere with the operation of the project.

ARTICLE 6. Completion. The Contractor shall complete performance pursuant to Article 1(f) hereof within sixty (60) calendar days after the date of delivery of conveyances by the Government pursuant to Article 2(a)(5) hereof.

ARTICLE 7. Assignment of Claims.

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940 (Act of October 9, 1940; 31 U. S. Code 203, 41 U. S. Code 15), if this contract provides for payments aggregating \$1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and re-assigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Notwithstanding any provision of this contract, payment to an assignee of any claim under this contract shall not be subject to reduction or set-off for any indebtedness of the Contractor to the Government arising independently of this contract.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," "Confidential," or "Restricted," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same; provided that a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

ARTICLE 8. Covenant Against Contingent Fees.  
The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its

discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 9. Officials Not to Benefit. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

ARTICLE 10. Successors and Assigns Bound. This contract shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

ARTICLE 11. Definitions.

(a) The terms "Secretary of the Army" or "Head of the Department" as used herein shall have one and the same meaning and shall include the Assistant Secretary of the Army, and the term "his duly authorized representative" shall mean the Chief of Engineers, Department of the Army, or an individual or Board designated by him.

(b) Except for the original signing of this contract and except as otherwise stated herein, the term "Contracting Officer" as used herein shall include his duly appointed successor or his authorized representative.

ARTICLE 12. Negotiated Contract. This contract is authorized by and negotiated under the following laws:

The Flood Control Act of 1944 (Public Law 534,  
78th Cong., 2nd Sess.)

Public Law 356, 81st Cong., 1st Sess.

ARTICLE 13. Approval of Contract. This contract shall be subject to the written approval of the Chief of Engineers, Department of the Army, or his duly authorized representative, and of the Secretary of the Interior, or his duly authorized representative, and shall not be binding until so approved.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

Approved by

/s/ Michael W. Straus  
Commissioner, Bureau of  
Reclamation

By /s/ C. C. Haug  
C. C. Haug, Lt. Col.,  
Corps of Engineers,  
Contracting Officer  
(Official Title)

Two witnesses:

/s/ R. B. Chamberlain  
732 35th St.  
Sacramento, Calif.

NATOMAS WATER COMPANY  
(Contractor)

By /s/ R. G. Smith, President

607 Forum Bldg., Sacramento, Calif.  
(Business Address)

/s/ Norwood Silsbee

2709 Curtis Way  
Sacramento, Calif.  
(Address)

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I, Wanda Durkee, certify that I am the Secretary of the corporation named as Contractor herein; that R. G. Smith who signed this contract on behalf of the Contractor was then President of said corporation; that said contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(CORPORATE SEAL)

/s/ Wanda Durkee  
(Secretary)

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I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, who signed this contract for Natomas Water Company had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

(Contracting Officer)