

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
CENTRAL VALLEY PROJECT, CALIFORNIA

MARTIN H. BLOTE
1506-4th St. Room 401
Sacramento 14, Calif.

OPERATING CONTRACT RELATING TO FOLSOM AND NIMBUS DAMS AND THEIR
RELATED WORKS AND TO DIVERSIONS OF WATER BY THE CITY OF SACRAMENTO

1. THIS CONTRACT, made this 28th day of June, 1957, in pursuance generally of the Act of Congress approved June 17, 1902 (32 Stat. 388), and all acts of Congress amendatory thereof or supplementary thereto, particularly Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1187, 1197-1198), and the Act of Congress approved October 14, 1949 (Ch. 690, 63 Stat. 852), all of which are commonly known and referred to as the Federal Reclamation Laws, between THE UNITED STATES OF AMERICA, hereinafter referred to as the "United States", represented by its officer who executes this contract, his duly appointed successor, or his duly authorized representative, herein styled the "Contracting Officer", and THE CITY OF SACRAMENTO, CALIFORNIA, a municipal corporation, herein styled the "City", acting by and in pursuance of the authority contained in the Constitution and laws of the State of California and particularly Article XI, Sections 8 and 19 of said Constitution, and Sections 2 and 5 of the City's Charter approved by Stats. 1921, p. 1919, as amended.

W I T N E S S E T H:

2. WHEREAS, the United States has constructed a dam and reservoir in and across the American River at a point upstream from Folsom, Sacramento County, California, and will utilize said dam and

reservoir and their related works for the diversion and storage of waters of the American River for reasonable and beneficial uses and purposes, said dam being known as Folsom Dam and the reservoir created thereby being known as Folsom Lake; and

3. WHEREAS, in carrying out the provisions of said Federal Reclamation Laws the United States deems it advantageous upon the terms herein agreed upon to dispose of rights to stored water in its reservoirs heretofore constructed or that might be constructed by the United States under the provisions of the Reclamation Act, and

4. WHEREAS, the City has constructed and is operating certain diversion and distribution facilities for the diversion of water of the Sacramento River and has perfected certain rights to the use of water of the Sacramento River and its tributaries from natural flow and is in the process of perfecting additional rights to the use of water of the Sacramento and American Rivers, and the water it has historically diverted is deemed insufficient for the anticipated growth and water requirements of the City, and

5. WHEREAS, the City is desirous of perfecting its water supply by arranging with the United States for the use of a portion of the said storage waters, and

6. WHEREAS, the City desires and intends to construct water diversion and filtration facilities and related works on the American River below Nimbus Dam within or adjacent to the City for diversion and distribution of water supplies for a municipal use and desires to continue and develop the use of the waters of the Sacramento River through its existing facilities at a point one-quarter

mile below the confluence of the Sacramento and American Rivers, and through other facilities which may be constructed on the Sacramento River within or adjacent to the City, for diversion, filtration and distribution of water, and

7. WHEREAS, the United States and the City have filed applications for the appropriation of unappropriated water and have protested certain applications of each other for the appropriation of unappropriated water, and it is the desire of the parties to settle and adjust any and all differences that might exist between them so that definite assurances can be had as nearly as practicable for the continued enjoyment and use of their respective diversion facilities and operations and to provide amicable means for the necessary increase and expansion of the City's beneficial uses of water, and

8. WHEREAS, the construction and operation of Folsom Dam and its related works and the distribution and regulation of the water of the American River and its tributaries as provided for under this contract are deemed to be mutually beneficial and desirable:

NOW, THEREFORE, in consideration of the premises herein contained, it is hereby agreed by and between the parties hereto as follows:

9. On March 19, 1957, the United States and the Sacramento Municipal Utility District, a municipal corporation, executed a contract entitled "Contract Relating to Sacramento Municipal Utility District Upper American River Project Reservoirs", a copy of which is attached hereto and hereinafter referred to as the SMUD contract.

The following paragraph of this Article is a diversion schedule prepared to show the schedule of diversions by the City of

Sacramento with and without the development by SMUD, referred to in the SMUD contract. The quantities are expressed in thousands of acre feet for the respective years. The requirements shown in Schedule A of the tabulation are derived from information given in City of Sacramento Exhibit No. 4, Table 3, of the records, files and proceedings of the California State Water Rights Board concerning application 12140, and others, before that Board for the appropriation of unappropriated water. The quantities shown in Schedule B of the tabulation are 75% of the annual requirements given in Schedule A of the tabulation.

Diversion schedule by City of Sacramento
with and without SMUD development,
in 1,000 acre-feet

Year	Requirement : Required from Folsom Reservoir			
	Total require-ment		from American River	
	Schedule "A"		Schedule "B"	
	Schedule "A"		Schedule "B"	
			Without SMUD development	With SMUD development
1963	64.0	48.0	8.0	8.0
64	66.0	49.5	8.5	8.5
965	68.0	51.0	9.0	9.0
66	70.5	53.0	9.4	9.4
67	73.0	55.0	9.8	9.8
68	75.5	56.5	10.0	10.0
69	78.0	58.5	10.5	10.5
970	80.7	60.5	11.0	11.0
71	83.0	62.5	11.5	11.5
72	86.0	64.5	12.0	12.0
73	88.5	66.5	12.5	12.5
74	91.5	68.5	13.0	13.0
975	94.5	71.0	13.5	13.5
76	97.5	73.0	14.0	14.0
77	100.5	75.5	15.0	14.5
78	103.5	77.5	16.0	15.0
79	106.5	80.0	17.5	15.5
980	110.0	82.5	19.0	16.0
81	113.0	85.0	21.0	16.5
82	116.0	87.0	23.0	17.0
83	119.5	89.5	25.0	17.5
84	123.0	92.0	27.5	18.0
985	126.0	94.5	30.0	18.5

Year	Requirement : Required from Folsom Reservoir			
	Total require- ment	From American River	Without SMUD : With SMUD	
			development : development	
			Schedule "A"	Schedule "B"
			Schedule "C"	Schedule "D"
1986	129.5	97.0	32.0	19.5
87	133.0	99.5	35.0	20.0
88	135.5	102.0	37.5	20.5
89	140.0	105.0	40.0	21.0
1990	143.5	107.5	43.0	22.0
91	147.5	110.5	46.0	22.5
92	151.0	113.0	49.0	23.5
93	154.5	116.0	52.0	24.0
94	158.5	119.0	55.0	24.5
1995	162.5	122.0	58.0	25.5
96	166.5	125.0	61.0	26.0
97	171.0	128.0	64.5	27.0
98	175.0	131.0	67.5	28.0
99	179.0	134.0	71.0	29.0
2000	183.5	137.5	74.5	30.0
01	187.5	140.5	78.0	31.0
02	192.0	144.0	81.0	32.0
03	196.0	147.0	85.0	33.0
04	200.5	150.5	88.0	34.5
2005	205.0	154.0	91.5	36.0
06	209.5	157.0	95.0	37.5
07	214.0	160.5	98.5	39.0
08	218.5	164.0	102.0	40.5
09	223.0	167.5	105.5	42.5
2010	227.5	170.5	109.0	44.0
11	232.5	174.5	113.0	46.5
12	237.0	178.0	116.0	48.5
13	242.0	181.5	120.0	50.5
14	247.5	185.5	124.0	53.0
2015	252.0	189.0	127.5	55.5
16	257.5	193.0	131.0	58.0
17	262.5	197.0	135.0	60.0
18	268.0	201.0	138.5	62.5
19	273.0	205.0	142.5	64.5
20	278.0	208.5	146.5	67.0
21	283.0	212.5	150.5	69.5
22	288.5	216.5	154.5	71.5
23	293.5	220.0	158.5	74.0
24	298.5	224.0	162.5	76.0
2025	304.0	228.0	166.5	78.5
26	308.5	231.5	171.0	81.0
27	313.5	235.0	175.0	83.0
28	318.0	238.5	179.0	85.5
29	322.5	242.0	183.5	88.0
2030 and subsequent years	326.8	245.0	187.5	90.0

The United States will make available for diversion by the City water from the American River up to the quantities specified in Schedule B, and the United States will so operate Shasta Dam and its related works so as not to interfere with the diversions by the City at its facilities on the Sacramento River referred to in Article No. 6 above or to prevent the City from enjoying the additional diversions represented by the difference between Schedules A and B.

The United States will impound and store water in the reservoirs back of Folsom and Nimbus Dams or elsewhere and does hereby agree to discharge and release into the river channel below Nimbus Dam for the use of the City an amount of water which will, with all of the water that the City is otherwise entitled to and all water not otherwise appropriated, aggregate a quantity of water as shown in Schedule B and will so operate Folsom and Nimbus Dams and their related works that water will be discharged and released into the river channel below Nimbus Dam for later downstream diversion by the City at its said American River diversion and filtration facilities at the times and in the quantities shown in Schedule B.

10. The City's rate of diversion from the Sacramento River shall not exceed 225 cubic feet of water per second and its rate of diversion from the American River shall not exceed 675 cubic feet of water per second; and the total quantity diverted by the City from the American River shall not exceed the quantities shown in Schedule B. Following April 1 of any water year in which the October 1 - Sept. 30 estimated natural inflow to Folsom Reservoir measured and as predicted by the United States based, in part, upon the runoff estimates of the California Cooperative Snow Survey Program on April 1 is less than

1,275,000 acre-feet, City's diversions from the American River each month when requested by the Contracting Officer shall not exceed 75% of the aggregate taking from both the Sacramento and American Rivers until Folsom Reservoir would fill or reach flood-control limitation in the absence of additional storage facilities on the American River

11. The City shall be entitled to reasonable flexibility in demands based on maximum daily requirements and maximum peaks during such days. The City will cooperate with the Contracting Officer to facilitate United States operations to make this possible.

12. City shall pay, at the rate of \$9.00 per acre foot, beginning in 1963, for the number of acre feet shown in Schedule C: Provided, however, that if the Sacramento Municipal Utility District builds its Upper American River Project and operates that project in accordance with the SMUD contract the City shall pay, at the rate of \$9.00 per acre foot, beginning in 1963, for the number of acre feet shown in Schedule D.

The City shall make payments to the United States each calendar year as hereinafter provided, at rates fixed as provided in this Article. The City shall pay one-half of the amount payable for the year on or before January 1, and shall pay the remainder of the amount payable for the year on July 1.

Upon every installment of money required to be paid by the City 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 charge 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 City hereby agrees

to pay said charge: Provided, That no such charge shall be made to or be paid by the City unless such delinquency continues for more than thirty (30) days.

Payment shall be made at the office of the Regional Director of the Bureau of Reclamation, Town and Country Village in Sacramento County, or at any other place designated by the United States in a written notice to the City.

13. The parties agree that in 1978 and again in 1988 the parties may renegotiate the terms of this contract as to quantities of water diverted and to be diverted by the City, so that the schedule of water diversions can be revised downward, and consequent payment for water shall be reduced proportionately thereafter in the ratio that the revised Schedule "B" bears to the original Schedule "B".

14. If prior to the year 2030, the City finds that because of accelerated growth its water requirements are greater than those indicated by Schedule A, the quantity of water to be furnished each year can be advanced in the schedule. In such case, the payment based upon Schedules C or D would be similarly advanced. This advancement of the schedule of diversions and of payments would not entitle the City to any water from the American River above the maximum of 245,000 acre feet annually as provided for in Schedule B above.

15. Should the City requirements exceed 245,000 acre feet annually from the American River it shall be the right of the City to secure the additional water it needs by means other than this contract. These other means may be, and are not restricted to, additional contracts with the United States if both the City and United States agree

50, such contracts, contracts with other parties, or the development by the City itself of additional water supplies, provided that the development of such supplies shall not involve the use of any facilities or water rights of the United States without its permission.

16. Should the Sacramento Municipal Utility District build and operate its project as provided in the SMUD contract during or after 1978 then payments being made by the City would change from Schedule C basis back to Schedule D basis when the SMUD project becomes so operational.

17. Should the Sacramento Municipal Utility District build and operate a project of lesser extent than that contemplated in the SMUD contract and which project might produce less water, and to the extent that SMUD releases are smaller, a new payment schedule shall be computed which will be intermediate between the basis of Schedules C and D and so computed to reflect payment for average computed demands on Folsom Reservoir.

18. The City will retain all its water rights and as between the United States and the City, the use of water by the City under the contract shall be treated by the United States as diligence of the City in perfecting by beneficial use the developing rights of the City in the Sacramento and American Rivers. Furthermore, by this contract the parties request the properly constituted agencies of the State of California to issue permits and licenses designated to sanction or permit the operations specified in this contract, but the parties agree that any necessary applications, permits and licenses, and right of way and all sources and derivations owned by them may and shall be exercised as required to the end that the operational matters specified in this contract may and shall be performed, and the parties will use

due diligence to protect and defend their water rights and to acquire and keep in good standing any necessary applications, permits and licenses provided for by the laws of the State of California.

19. The City upon receiving the water discharged and released below Nimbus Dam and bypassed below Nimbus Dam as herein provided will at its own cost convey the same to the places of use and perform all actions necessary or required by law or custom in order to maintain its control over such water, and in order to secure its lawful and proper diversion from the said river through the head works of the City and the beneficial application of the same to use. All losses or diminution of such water by reason of seepage, evaporation, or other causes, after diversion by the City at the aforesaid point of diversion shall be borne by the City.

20. Beneficial use shall be the basis, measure and limit of all rights hereunder.

21. The United States shall not be responsible for failure to supply water under this contract caused by insufficient supply of water, hostile diversion, unusual drouth, interruption of service made necessary by repairs, nor on account of any other distribution than that herein stipulated for, directed, or ordered to be made by any valid or subsisting order or decree of a court, nor for any damages caused by floods, acts of hostility, or unavoidable circumstances, nor for loss of crops or other damage caused by non-delivery of water.

22. The rights under this agreement shall be such as would permit the City to use the water in such manner as may be granted to it under State law.

23. This contract shall be permanent, and the quantity of water diverted from the American River by the City shall not exceed 245,000 acre-feet per year nor the rate of 0.75 cfs; also, the quantity diverted by the City from the Sacramento River shall not exceed 225 cfs. Provided, as a condition and not as a limitation or covenant, performance by the United States under the contract shall be in accord with the rights of the City as defined in any license or licenses granted under the law of California, and should such license or licenses provide for a lesser rate of diversions than those herein assumed, then the obligation of the United States for the discharge and releases of water from and by its storage works on the Sacramento and American Rivers shall be adjusted accordingly.

24. The execution of this contract shall constitute a withdrawal of any protest the United States has against any applications of the City for the appropriation of unappropriated water of the American and Sacramento Rivers.

25. The execution of this contract, also, shall constitute a withdrawal of any protests by the City against the applications of the United States for the appropriation of unappropriated water of the American and Sacramento Rivers.

26. By the execution of this agreement the parties hereto join in asking the Director of the Department of Water Resources of the State of California to execute a partial transfer to the City of Applications 5635, 5636, 5645, 7933, 7939 and 7940 for the appropriation of unappropriated water, insofar as they may now or hereafter be required for operations for the benefit of the City under this contract and to assign the rest and remainder of said applications to

the United States for use in the operation of the Central Valley Project.

27. Notwithstanding any permit or license issued to the United States for any diversion of the Sacramento and American Rivers below the points of diversion of the City of Sacramento, the uses of water under this contract shall carry all priorities accorded to or for municipal uses under the laws of the State of California and the United States will recognize such priorities. Within the limits of available water supply the City would not be required to accept any pro-rata of a deficiency in water of the American River.

28. No warranties, express or implied, by the United States shall be deemed to exist with regard to the potability of the water supplies diverted by the City, but to the contrary, the City itself will take due measures on its own behalf to insure and protect the potability of its own water supplies.

29. The parties agree and consent that this contract can be referred to and adopted by any administrative or judicial body of the state or federal government that has a proper governmental function with respect to the operational matters referred to in this contract and it may adopt, if desired, this contract as a part of any relevant administrative or judicial act, order or decree.

30. In order to enable the United States to discharge and release the supply of water herein specified on the basis of payments as herein provided, the City hereby makes available to the United States for exercise, delivery and performance of this contract, with title, however, to remain in the City, all of its right, title, and interest to the waters of the Sacramento River and its tributaries over and above any amounts provided for in this contract, and limits

its claims to the amounts specified in this contract, and the City shall assist the United States in the defense of said claims by the furnishing of all evidence and other like matters in its power or knowledge, in consideration whereof, upon the failure of the United States, through drouth or otherwise to fulfill its obligations hereunder, the City's said claims and rights to water shall revert unburdened to the City until deliveries of water as provided by this contract shall be resumed. The City will not convey, encumber, or transfer its water rights in such manner as to impair the ability of the parties to perform the provisions of this contract, and the City warrants that it has not heretofore impaired any of its water rights.

31. The City agrees to install, operate, and maintain such equipment and to make such computations as may be necessary to record all stream diversions of and by its various project facilities. Authorized representatives of the United States shall have access to such equipment at all reasonable times and shall be supplied with copies of all such records and computations upon request.

32. Except as provided herein, nothing herein is to be construed as an allocation of water rights as between the United States and the City or as between the signatories hereto and any third parties.

33. Subject to the provisions of this contract the United States may store and retain in its reservoirs on the American River, now constructed or to be constructed, all or such part of the water of the American River and its tributaries for such periods of time, including periods of several years' duration, as it may desire, and may withdraw water from storage in its reservoirs, in such amounts and in such rates as it may desire, and may restore

in one or more of its reservoirs all or any part of the water of the American River and its tributaries, and may divert the water within or without the watershed, provided, that nothing herein shall prevent the City from obtaining rights to use waters of the American River for municipal purposes from any storage project on the American River hereafter constructed which does not utilize facilities or water rights of the United States.

34. Subject to the provisions of this contract the United States may store and retain in its reservoirs on the Sacramento River, now constructed or to be constructed, all or such part of the water of the Sacramento River and its tributaries for such periods of time as it may desire, including periods of several years' duration, and may withdraw water from storage in its reservoirs, in such amounts and at such rates as it may desire, and may restore in one or more of its reservoirs all or any part of the water of the Sacramento River and its tributaries as it may desire, and may divert the water within or without the watershed, provided, that nothing herein shall prevent the City from obtaining rights to use waters of the Sacramento River or its tributaries for municipal purposes from any storage project on the Sacramento River or its tributaries hereafter constructed which does not utilize facilities or water rights of the United States.

35. It is the desire of the United States and the City to provide for the maximum beneficial use of the waters of the American and Sacramento Rivers and their tributaries, and to accomplish such purpose it may be desirable that operations under this contract be modified. Representatives of the United States and the City will confer with each other at least once each year, and if it shall appear

to them salt storage, retention, or release other than that contemplated by this contract may be made without substantial injury or harm to the respective interests of the parties hereto in such waters and their use, then it is agreed between the parties that such storage, retention, or release may be made for the period agreed upon. Upon the expiration of such agreed period of time, in the absence of further agreement, the operations specified in this contract shall govern. Any such agreement reached by representatives of the United States and of the City shall forthwith be confirmed in writing by the representative of the party initiating the request. For the purpose of such conferences the City shall designate a representative, and the Contracting Officer shall designate a representative for the United States. Each such representative shall continue in office until his successor is duly designated. Such representative shall be authorized so to confer and to agree to such storage, retention, and release under such conditions as may carry out the purpose of this Article.

36. Representatives of the United States and the City shall confer with each other as often as necessary for the purpose of agreeing upon or approving methods, procedure, data, or other matters required under this contract to be mutually agreed upon or approved by the United States and the City. For the purpose of such conferences and for agreeing to or approving such matters the City shall designate a representative, and the Contracting Officer shall designate a representative for the United States, which may be the same persons designated pursuant to the preceding Article. Any such agreement reached by the United States and the City shall be reduced to writing and signed

by such representatives. Each such representative shall continue in office until his successor is duly designated. Such representatives shall be authorized so to confer and to agree to or approve such matters.

37. 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 by a corporation or company for its general benefit.

38. This contract shall inure solely to the benefit of the parties hereto and their respective successors and assigns. No other person, partnership, association, district, or corporation shall acquire or have any right under or by virtue of this contract. This contract shall be binding upon any respective successors and assigns of the parties hereto.

39. This contract shall become effective concurrently with the issuance to the parties of permits by the California State Water Rights Board in consonance with the operations herein specified. The effective date shall be established by a joint announcement of the parties. The operating requirements of the parties shall begin with the year 1963 in which the City expects to begin the operation of its American River diversion facilities, but payments under the contract by the City shall be apportioned in accordance with the American River diversions by the City during that year.

40. Contingent upon Appropriations

Where the operations of this contract extend beyond the current fiscal year, the contract is made contingent upon Congress

making the necessary appropriation for expenditures hereunder after such current year shall have expired. In case such appropriation as may be necessary to carry out this contract is not made, the City hereby releases the United States from all liability due to the failure of Congress to make such appropriation.

41. Nondiscrimination in Employment

In connection with the performance of work under this contract, the City agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The City agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

The City further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

IN WITNESS WHEREOF, the parties hereto have duly executed these presents in eight counterparts all as of the day and year first hereinabove written.

THE UNITED STATES OF AMERICA

/s/ By C. H. SPENCER
Regional Director, Region II
Bureau of Reclamation

CITY OF SACRAMENTO,
a municipal corporation

ATTEST: /s/ By CLARENCE L. AZEVEDO
Mayor

/s/ PAUL H. MANEY
City Clerk

APPROVED AS TO FORM:

/s/ EVERETT M. GLENN
City Attorney