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May 8, 2018

Via Electronic Mail and U.S. Mail

Judge Michael J. Melloy
U.S. Court of Appeals for the Eighth Circuit
United States Courthouse
111 Seventh Avenue S.E., Box 22
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Michael_Melloy@ca8.uscourts.gov
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Re: *State of Texas v. State of New Mexico and State of Colorado*
Supreme Court Docket No. 141 Original – Contracts for Review

Dear Special Master Melloy:

This letter is on behalf of the State of Texas (Texas) and the United States (U.S.). Attached are copies of the 1937 repayment contracts between the United States and, respectively, the Elephant Butte Irrigation District (EBID) and the El Paso Water Conservation Improvement District No. 1 (EP1). These are the “Downstream Contracts” that were referred to in the Supreme Court’s March 5, 2018, opinion in the above-referenced case. It is our understanding that no party objects to our providing these contracts to you as you had requested. Although you may already have a copy of this document since it was appended to Mr. Grimsal’s Report, we have also attached a copy of the 1938 agreement between EBID and EP1.

It is our understanding that New Mexico intends to provide you with numerous agreements that pre-date the 1937 repayment contracts. These documents were neither referred to by Mr. Grimsal nor, in any way, referred to by the Supreme Court. Accordingly, they cannot be what the Court referred to when it referenced Downstream Contracts. Moreover, all of those agreements were superseded with the execution of the congressionally authorized 1937 repayment contracts. As a consequence, Texas and the U.S. object to New Mexico’s production at this time and in this manner.

Very truly yours,

Stuart L. Somach,
Counsel of Record
State of Texas

Special Master Melloy

Re: *State of Texas v. State of New Mexico*, et al., Supreme Court Docket No. 141 Original

May 8, 2018

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James J. DuBois, Trial Attorney
United States Department of Justice

SLS:rs

Attachments

cc: All counsel via e-mail only (See Attached Service List)

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(Service via E-Mail and US Mail)

Honorable Michael J. Melloy
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WR0102413-49

RIO GRANDE PROJECT

CONTRACT

NOV. 10, 1937

EL PASO COUNTY WATER IMPROVEMENT

DISTRICT NO. 1

Symbol Ilr-981

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

RIO GRANDE PROJECT, NEW MEXICO-TEXAS

Contract between the United States and the El Paso County Water Improvement District No. 1 adjusting construction charges and for other purposes.

This agreement made this 10th day of November, 1937, under the provisions of the Act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof and supplementary thereto, and especially the statutory provisions (quoted in Article 3 hereof) relating to the Rio Grande project and contained in the Bureau of Reclamation part of the Interior Department Appropriation Act, fiscal year 1938, approved August 9, 1937, (Public No. 249, 75th Congress, 1st Session), all said acts being hereinafter comprehensively referred to as the Reclamation Law, by and between the United States of America, acting for this purpose by and through Oscar L. Chapman, Assistant Secretary of the Interior, and the El Paso County Water Improvement District No. 1, an irrigation district duly organized and existing under the laws of the State of Texas.

WITNESSETH That:

Definitions

Article 2. As used herein the following abbreviated terms mean the terms set out directly thereafter as follows:

United States - United States of America

Secretary - Secretary of the Interior

District - El Paso County Water Improvement District No. 1.

Association - El Paso Valley Water Users' Association.

Contract of June 27, 1906 as amended and supplemented - The following contracts between the United States and the El Paso Valley Water Users' Association and the El Paso County Water Improvement District No. 1:

1. Joint contract with the Elephant Butte Water Users' Association and the El Paso Valley Water Users' Association, dated June 27, 1906.

2. Contracts with Association, dated August 19, 1916, and August 13, 1917.
3. Joint contract with Association and District, dated December 29, 1917.
4. Joint contract with Association and District, dated January 17, 1920.
5. Contracts with District, dated July 1, 1922, October 12, 1922, August 2, 1926, July 16, 1928, August 4, 1928, September 3, 1929, and November 2, 1932.

Power Privilege Agreement - Joint contract between the United States, the District and the Elephant Butte Irrigation District, dated May 10, 1928.

Storage system - Elephant Butte Dam and Reservoir and appurtenant works and the Caballo Dam and Reservoir and appurtenant works.

Power system - Power plants, transmission lines, etc., constructed or to be constructed for development of power.

Irrigation and Drainage system - All project works except the Storage and power systems.

Explanatory Recitals

Article 3. Whereas, the Interior Department Appropriation Act, fiscal year 1938, under the caption "Bureau of Reclamation", contains the following provisions in the item for the Rio Grande project, New Mexico-Texas:

"Provided, That the Secretary of the Interior is hereby authorized to enter into a contract with the El Paso County Water Improvement District Numbered 1 and the Elephant Butte Irrigation District of New Mexico by which the districts will be relieved of the obligation of making payment of the construction cost chargeable to the development of power of Elephant Butte Dam in the amount determined as equitable by the Secretary of the Interior in return for the conveyance by the said two districts to the United States of all the districts' right, title, interest, and estate in the use of said dam and other project works, including the project water supply, for the development of hydroelectric energy: Provided further, That in such contracts it shall be stated that the use of the dam, project works, and water supply for power purposes shall not deplete or interfere with the use thereof for irrigation purposes: Provided further, That the net earnings of the power plant and system belonging to the United States and any other available revenues shall be applied, until the cost thereof

has been met, upon the cost of the power development, including (1) the cost of power facilities, (2) the amount invested as herein authorized, in the cost of Elephant Butte Dam, and (3) the amount invested by the Bureau of Reclamation in Caballo Dam: Provided further, That after the cost of the power development has been met the net earnings of the power plant and system shall be disposed of as Congress may direct."

Article 4. Whereas, the District desires to receive (1) the benefits of the provisions of the Interior Department Appropriation Act hereinbefore quoted and also (2) the benefits of the provisions of other acts of Congress relating to the repayment of charges in return for the conveyance by the District, for itself and the landowners therein, to the United States of all the right, title, interest, and estate of the district and its landowners in the use of said dam and other project works, including the project water supply, for the development of hydroelectric energy.

Now, Therefore, in consideration of the covenants herein contained, it is agreed between the parties as follows:

District Relieved of Obligation for
Construction Cost Chargeable to Power

Article 5. The equitable amount of the construction cost of the storage system (exclusive of Caballo Dam and reservoir) chargeable to power development, as determined by the Secretary and accepted by the District, is \$4,246,408.39, computed as follows:

Cost of Storage System	
(exclusive of Caballo Dam and reservoir)	
Elephant Butte Dam and reservoir	\$5,219,663.53
Related features - roads, etc.	26,744.86
	\$5,246,408.39
Less - Direct Appropriation	
(Non-reimbursable) Act of	
March 4, 1907 (34 Stat., 1357)	1,000,000.00
Balance chargeable to power development	\$4,246,408.39

The United States, pursuant to the provisions of the Interior Department Appropriation Act, fiscal year 1938, hereinbefore quoted, will and hereby does relieve the District of 43.2258 per centum of the amount herein fixed as the equitable amount of the construction cost chargeable to power development, or \$1,835,544.00, and will and hereby does reduce the District's obligation for the repayment of its share of the construction cost of the project from \$6,106,000.00 which the

District assumed and agreed to pay to the United States under the contract of June 27, 1906, as amended and supplemented, to \$4,270,456.00.

Operation and Maintenance Cost for Irrigation
and Drainage System, Calendar Year 1937,
Added to Construction Obligation.

Article 6. The notice issued February 11, 1937, to the District by the Secretary, pursuant to the provisions of the contract of June 27, 1906, as amended and supplemented, announcing the estimated cost of operating and maintaining that portion of the Rio Grande project irrigation and drainage system which is utilized for the benefit of lands within the District for the irrigation season 1937 (calendar year 1937), and requiring the payment of a reservoir or storage charge for certain lands is hereby rescinded. In lieu thereof, the District's share of the cost of operation and maintenance of the irrigation and drainage system (exclusive of the storage system) for the calendar year 1937, estimated at \$156,000 will be added to and shall be payable with the reduced construction obligation fixed in article 5 hereof. In the event that the District's share of the actual cost of operation and maintenance during the calendar year 1937, as conclusively determined by the Secretary, is less than the estimated amount thereof, the excess of estimate over cost will be credited as a reduction of the construction charge installment due and payable by the District to the United States in the calendar year 1938; in the event that the District's share of the actual cost is greater than the estimated amount, the excess of cost over estimate will be added to the construction charge installment due and payable by the District to the United States in the calendar year 1939.

Interest on Construction Charges Deferred under the
Act of April 1, 1932, as Amended and Supplemented
Added to the Construction Obligation.

Article 7. Pursuant to the acceptance by the District of the Act of April 1, 1932, (47 Stat., 75), as amended and supplemented, extending the time of payment for all or part of construction charge installments for the years 1930 to and including 1936, the District is obligated to pay the United States interest charges in the amount of \$16,933.44. The District agrees to pay such interest charges to the United States hereinafter provided as a part of the adjusted construction charge obligation.

District Assumes Payment of the Adjusted Construction
Obligation.

Article 8. The District assumes and agrees to pay the adjusted construction charge obligation of \$4,443,389.44, being the total of the items set forth in articles 5, 6, and 7, above. It is understood and agreed that the District has paid to the United States construction charges aggregating \$1,407,933.85 and will on or before the execution by it of this contract, pay, with accrued penalties the balance of \$1,541.75 of the 1936 construction charge installment, due and payable

on March 1, 1937, and it is also understood that the Department of Justice has paid to the Reclamation Fund on behalf of the Detention Farm area of 400 acres included in the Texas portion of the project, the sum of \$25,040.00. The aggregate amount of \$1,434,515.60 will be applied to the payment of the adjusted construction obligation of \$4,443,389.44 and the District agrees to pay the resulting balance of the construction charge obligation, viz., \$3,008,873.84, in fifty equal successive semi-annual installments, on March 1, and September 1 of each year commencing with the first payment due and payable on March 1, 1938, and ending with the last payment due and payable on September 1, 1962, the installments for 1938 and 1939, however, being subject to possible adjustment as provided in Article 6 hereof.

Segregation of Project Features for Purposes of Operation
and Maintenance - 1937 and thereafter.

Article 9. The United States will continue the operation and maintenance of the project until otherwise provided. Beginning with the calendar year 1937, the operation and maintenance of the project will be segregated as (a) operation and maintenance of the storage system and power system, and (b) operation and maintenance of the remainder of the project, hereinafter referred to as the irrigation and drainage system.

Operation and Maintenance of Storage System for Delivery of
Irrigation Water.

Article 10. For the calendar year 1937, and thereafter during the period of the repayment of the remaining construction obligation of the District as fixed in article 8 hereof, the District will pay to the United States, in lieu of regular operation and maintenance charges for the storage system, and in lieu of the storage water rental charge heretofore collected for lands not designated for payment of construction charges, a reservoir service charge of ten cents (10 cents) per acre-foot for each and every acre-foot of water, reasonably necessary for irrigation, made available for the lands of the District at the turnouts of the Elephant Butte dam, until the Caballo Dam is completed, thenceforth at the turnouts of the Caballo dam. Because of the requirement for the payment of the reservoir service charge as herein provided, the provisions of the contracts between the District and the United States, and of the notice of February 11, 1937, given by the First Assistant Secretary to the District, requiring the payment of an annual storage water rental charge for the calendar year 1937 of fifty cents (50 cents) per acre for the total area within the district for lands not designated for commencing payment of construction charges shall be inoperative for the calendar year 1937, and such annual storage rental charges shall not be collected by the United States for subsequent years.

The officer of the Bureau of Reclamation in charge of the Rio Grande project will render on or before October 15, 1937, and on or

before October 15 of each year thereafter, a statement to the District of the number of acre-feet turned out of the reservoir for the lands within the District and the amount due hereunder for the then preceding twelve months, and the District will pay the amount stated in such notice on or before the first day of March following rendition of the statement. Payments for such reservoir service shall continue for each year during the period of repayment of the remaining construction obligation of the District as provided in Article 8 hereof. For the year immediately following the year for which the last installment of the adjusted construction obligation is payable, and for each succeeding year thereafter, the Secretary will make an equitable determination of the District's share of the estimated cost of operating and maintaining the storage system for irrigation purposes and the amount so determined annually shall be included in and combined with the annual estimate of operation and maintenance of the irrigation and drainage system and shall be due and payable at the same time and in like manner as provided in Article 11 hereof.

Operation and Maintenance for 1938 and Thereafter
Payable in Advance

Article 11. The period during which the United States continues after January 1, 1938, to operate and maintain the Rio Grande project for and within the District, will hereinafter be referred to as the Government maintenance period. The District will, during the Government maintenance period, pay to the United States in advance the estimated cost of operating and maintaining that portion of the project, other than the storage and power systems, which is utilized for the benefit of lands within the District. Such estimated cost for the calendar year 1938 is \$156,000, of which the amount of \$37,000.00 shall be due and payable on or before December 15, 1937, and the amount of \$72,900 thereof shall be due and payable on or before February 15, 1938, and the remainder thereof in the amount of \$46,100 shall be due and payable on or before July 15, 1938. Each year thereafter during the Government maintenance period the annual estimated cost shall become due and payable in the following manner: On or before September 1, 1938, and on or before September 1 of each subsequent calendar year during the Government maintenance period, the Secretary will notify the District of the amount of the District's proportion of the estimated operation and maintenance cost (including all necessary equipment, materials and supplies, proper overhead and general charges) in operating and maintaining the project works, other than the storage and power systems, during the calendar year next succeeding the year in which the notice is given. Such notice will state the District's share of such estimated cost (a) for the first two months of the calendar year next succeeding, (b) for the five next succeeding months, and (c) for the remaining five months of the calendar year for which notice is given. The amount stated for the first two months of the calendar year shall be due and payable on or before December 15 of the year in which the notice is given; the amount stated for the next succeeding five months shall be due and payable on or before February 15 of the calendar year next succeeding the year in which the

notice is given; and the amount stated for the last five months of the calendar year shall be due and payable on or before July 15 of the calendar year next succeeding the year in which the notice is given. As soon as practicable after the close of the calendar year for which notice of the estimated cost of operation and maintenance is given, the District will be furnished a statement of actual cost of such operation and maintenance and the District's proportionate share thereof, and any excess of payment upon the basis of estimated costs over actual costs shall be credited upon the payment due and payable by the District on July 15 next succeeding such calendar year. If in the opinion of the Secretary the estimate of such operation and maintenance cost appears to be insufficient to meet the actual cost thereof he shall give notice of such threatened deficiency and his estimate of the amount thereof and the District's share thereof, and the District shall pay to the United States its proportion of the amount of such deficiency within 15 days from the date of such notice. Should the District fail to make payment of any operation and maintenance charges at the time and in the manner above provided, the United States will be under no further obligation to deliver water to any land within the District, beyond funds available therefor.

District to Receive Credit for Water Rental Collections
from Hudspeth County Conservation and Reclamation District.

Article 12. Pursuant to subsection J of section 4 of the Act of December 5, 1924 (43 Stat., 703), collections of water rental charges under the contract between the United States and the Hudspeth County Conservation and Reclamation District No. 1, dated December 1, 1924, as heretofore or hereafter amended and supplemented, during the calendar year 1937, and annually thereafter, will be credited to the District's obligations as follows: The District's pro rata share thereof as conclusively determined by the Secretary will be segregated by construction component and operation and maintenance component as also conclusively determined by the Secretary. The construction component will be credited to the payment of the District's construction charge installment next due and payable after the collection of such water rental charge is made from the Hudspeth District, and the operation component will be credited to the payment of the District's operation and maintenance payment next due and payable after the collection of such water rental charge is made from the Hudspeth District.

Irrigation use of Project Water Supply is primary Use

Article 13. In carrying out the provisions of this contract the United States shall operate the Elephant Butte Dam and other project works connected therewith, including the project water supply for power purposes so as not to deplete or interfere with the use thereof for irrigation purposes. The storage works will be operated primarily for irrigation purposes and water is not to be released from Elephant Butte reservoir for the development of power except to the extent that such water may be retained in the Caballo reservoir until needed and released for irrigation purposes. Water thus intercepted and stored in the Caballo reservoir shall not be released therefrom in excess of releases estimated to be reasonably necessary to meet the requirements for irrigation purposes, for treaty allowances to the Republic of Mexico as provided in the treaty proclaimed January 16, 1907 and for flood control needs. Nothing in this contract shall ever be construed or interpreted so as to alter, diminish, or impair the right of project land owners to such water rights as may be or become appurtenant to their lands under the Federal Reclamation Laws and under the original contracts entered into between the original water users' association on this project and the United States.

Designation of Areas Subject to Construction Charges
No Longer Necessary

Article 14. Because of the change in the relations between the District and the United States as herein provided regarding the payment of the adjusted construction charge obligation, the parties hereto hereby rescind the provisions of Article 7 of the contract of December 29, 1917, and similar provisions of later contracts between the District and the United States, so far as said provisions require that, from time to time, as the Secretary may determine that specified areas of irrigable district lands, not necessarily contiguous, should commence the payment

of the construction charge of the irrigation works, he shall render a statement to such effect to the district, designating the areas of said district lands, stating the amount of the construction charge payable for such designated areas.

Additional Construction Work

Article 15. The United States will continue with the construction of the irrigation and drainage features of the project, contingent upon appropriations therefor being made available by Congress, to the extent that the District's adjusted construction charge obligation will permit. It is understood that, if for any reason the total construction cost chargeable to District lands is less than the District's adjusted construction obligation, the District will be relieved of the payment of such excess through a reduction to the extent of such excess of the construction charge installments payable at the end of the repayment period fixed herein, such reductions being applicable on said construction charge installments in the inverse order of due dates.

United States to Perform Work with Contributed Funds

Article 16. Pursuant to the Act of Congress of March 4, 1921 (41 Stat., 1367, 1404) the United States during the Government maintenance period will perform with funds contributed by the District such betterment or additional maintenance work on the project as may be deemed necessary by the District and approved by the Secretary. Before undertaking any such work the United States will be furnished with the necessary contributed funds, in one or more installments as may be agreed upon, accompanied by a certified copy of a resolution of the board of directors of the District, setting forth the nature of the work desired and authorizing its performance with such contributed funds. Upon the completion of the work so authorized, the District will be furnished with a statement of the cost thereof, and any unexpended balance of such contributed funds will be refunded to the District or applied otherwise as the District may direct.

Cancellation of Power Privilege Agreement

Article 17. The District and the United States hereby rescind that certain Power Privilege Agreement described in Article 2 hereof.

District Conveys Power Interests

Article 18. The District for itself, and its water users and landowners and for its and their successors and assigns, does hereby convey, and grant to the United States all of its and their claims of right, title, interest and estate, present and prospective in the use of the Elephant Butte Dam and other project works, including the project water supply, for the development of hydroelectric energy by the United States: Provided that the use of said dam, project works and water supply for power purposes shall not deplete or interfere with the use thereof for irrigation purposes: and Provided further, That the net earnings of the power plant and system belonging to the United States and any other available revenues accruing to the United States by reason of Government owner-

ship of the power plant and system shall be applied in accordance with the provisions of the item in the Interior Department Appropriation Act, fiscal year 1938, as set out in Article 3 hereof.

The validity of the conveyance to the United States as contained in this Article, is of the essence of this agreement. A contract similar to this (hereinafter referred to as the Elephant Butte contract) is being made coincidentally with the Elephant Butte Irrigation District, containing the portion of the Rio Grande Federal Reclamation project that lies in the State of New Mexico, and the Elephant Butte contract contains an article similar to Article 18 hereof. Should the conveyance to the United States in Article 18 hereof, or in the similar article of the Elephant Butte contract, ever be held invalid or ineffective in whole or in part, as to either district, or as to any water user or landowner or group of landowners in either or both districts, the Secretary may, by notice to the District, terminate this agreement, whereupon the rights and obligation of the parties hereto shall be reinstated, so far as practicable, as if this agreement has not been made. Any landowner of the district, or any holder of a mortgage or lien upon land in the district, who does not object to the confirmation of this contract by the courts shall be estopped thereafter to question the validity of this conveyance. Likewise any landowner of the district, or any holder of a mortgage or lien upon land in the district, who accepts the benefits of this agreement in the reduced construction installments permitted hereby, shall be deemed conclusively to have accepted this agreement and to have acceded to the conveyance herein made, so far as his land or interest is concerned.

Agreed Charges a General
Obligation of the District

Article 19. The District is obligated to pay to the United States the full amounts herein agreed upon according to the terms stated, notwithstanding any individual default in the payment of any assessments, tolls or charges levied by the District to secure funds to meet charges due to the United States.

District to Use All Powers
to Collect.

Article 20. All construction and operation and maintenance charges due to the United States hereunder shall be paid as required by this contract to the proper fiscal officer of the United States. The amounts due the United States shall be a first charge upon the collections of said district. The District agrees that it will cause to be levied and collected all necessary assessments, including a sum to cover (1) any individual collection delinquency for past years and (2) estimated individual collection delinquency for the year for which assessments are being levied, and will use all powers and resources of the District, including the taxing power of the District and the power to withhold delivery of water, to collect and pay to the United States all charges provided for in this contract in full on or before the day that the same become due.

No Water to be Delivered
Without Payment.

Article 21. Pursuant to the provisions of Section 6 of the Act of Congress of August 13, 1914 (38 Stat., 686) no water shall be delivered to or for any tract of land receiving water through the project works, the owner or holder of which shall be in arrears for more than one (1) year for the payment of any charge for operation and maintenance, or any annual construction charge, and penalties, or any assessments levied by the District for the purpose of paying construction or operation and maintenance charges, or who after the beginning of the year 1938 shall fail to pay in advance the annual operation and maintenance charges.

Water Users Accepting Benefits of Contract Estopped

Article 22. It is understood that the consideration hereof running to the District is the benefit conferred under the provisions of the Act set out in Article 3 hereof and of the Acts of December 5, 1924 and May 26, 1926, and that any landowner or water user of the District who accepts any such benefits under the terms hereof shall be estopped to disclaim any part of the obligation of the District hereunder. If (a) in any court action at the instance of the District or any of its officers, landowners or water users, this contract or any of its provisions are held to be void, so that in the opinion of the Secretary the contract becomes substantially incapable of performance, or if (b) in any court action at the instance of Elephant Butte Irrigation District or of any of its officers, landowners or water users, the Elephant Butte contract, as defined in Article 18 hereof, or any of its provisions are held to be void, so that in the opinion of the Secretary that contract becomes substantially incapable of performance, the District and its landowners or water users shall revert to the terms and conditions of the contract of June 27, 1906, as amended and supplemented with like effect as though this contract had never been executed.

Payment of Interest Charges

Article 23. Upon every sum of money required to be paid to the United States by this contract and not paid when due, interest at the rate of six (6) per centum shall be added from the due date until the date of payment, and the District hereby agrees to pay such interest.

Secretary Arbiter of Questions of Fact

Article 24. Whenever in this agreement an estimate or determination of fact is required or any question of fact is left undetermined by the provisions hereof, the Secretary shall make any and all such estimates and determinations of fact and decisions upon any and all questions of fact which may arise hereunder, and the Secretary's estimate, determination or decision thereof or thereon shall be binding and conclusive upon the parties to this agreement.

Access to Books and Records.

Article 25. The proper officer 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 United States relating to the construction, acquisition, care, operation and maintenance of the irrigation and drainage works, with the right at any time during office hours to make copies of, or from, the same or any of them, and the proper representatives of the United States shall have similar rights in respect to the account books and records of the District.

Election and Confirmation.

Article 26. The execution of this contract shall be authorized by the qualified electors of the District at an election held for that purpose and thereafter the District shall prosecute to final decree, proceedings in a court of competent jurisdiction for the confirmation of this contract. The United States shall not be required to proceed under the terms of this contract until (1) a confirmatory final judgment in such proceeding shall have been finally rendered, and (2) the Elephant Butte contract shall have been authorized at an election and confirmed by the courts of the State of New Mexico. The District shall furnish the United States certified copies of all proceedings relating to said election and confirmation proceedings.

Reversion to Contract of June 27, 1906 as Amended
And Supplemented on Failure of This Contract.

Article 27. In the event of a failure of the authorization of this contract at an election called for that purpose or in confirmation proceedings subsequently brought, this contract shall be void and of no effect and the parties hereto shall revert to the contract of June 27, 1906 as amended and supplemented with like effect as though this contract had never been executed.

This contract is also not to become effective for any purposes unless and until the Elephant Butte contract, as defined in Article 18 hereof, is voted and confirmed and becomes effective.

Provisions of the Contracts as Amended and Supplemented
Shall Remain Effective

Article 28. This agreement is supplemental to the contract of June 27, 1906 as amended and supplemented, and it is agreed that the terms and conditions thereof shall remain unaffected by the provisions hereof, except as they are modified by said provisions.

Remedies Saved to the United States.

Article 29. The mention of any remedies to the United States herein or in such contract of June 27, 1906, as amended and supplemented, for breach of any of said contracts shall not be understood to exclude the United States from any other remedy which it may have, and it is further

understood that 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.

Officials Not to Benefit.

Article 30. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or any benefit to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporated company, if the contract be for the general benefit of such corporation or company.

IN WITNESS WHEREOF, the parties have hereto subscribed their name the day and year first above written.

THE UNITED STATES OF AMERICA

By Oscar L. Chapman
Assistant Secretary of the Interior

EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1

By T. D. Porcher
President

(SEAL)

Attest: Idus T. Gillett
Secretary

DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
RIO GRANDE IRRIGATION PROJECT

C O N T R A C T

Dated November 9, 1937

between

THE UNITED STATES OF AMERICA

and

ELEPHANT BUTTE IRRIGATION DISTRICT

For the

Adjustment of construction charges and
cancellation of power privilege agreement.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

RIO GRANDE PROJECT, NEW MEXICO-TEXAS

Contract between the United States and the Elephant Butte Irrigation District adjusting construction charges and for other purposes.

This agreement made this 9th day of November, 1937, under the provisions of the Act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof and supplementary thereto, and especially the statutory provisions (quoted in Article 3 hereof) relating to the Rio Grande project and contained in the Bureau of Reclamation part of the Interior Department Appropriation Act, fiscal year 1938, approved August 9, 1937, (Public No. 249, H. R. 6958, 75th Congress), all said acts being hereinafter comprehensively referred to as the Reclamation Law, by and between the United States of America, acting for this purpose by and through Oscar L. Chapman, Assistant Secretary of the Interior, and the Elephant Butte Irrigation District, an irrigation district duly organized and existing under the laws of the State of New Mexico.

WITNESSETH That:

Definitions

Article 2. As used herein the following abbreviated terms mean the terms set out directly thereafter as follows:

United States - United States of America

Secretary - Secretary of the Interior

District - Elephant Butte Irrigation District

Association - Elephant Butte Water Users' Association

Contract of June 27, 1906 as amended and supplemented - The following contracts between the United States and the Elephant Butte Water Users' Association and the Elephant Butte Irrigation District:

1. Joint contract with the Elephant Butte Water Users' Association and the El Paso Valley Water Users' Association, dated June 27, 1906.
2. Contract with Association, dated July 6, 1917.
3. Joint contract with Association and District, dated June 15, 1918.
4. Contracts with District, dated October 11, 1919; July 1, 1922; February 21, 1924; July 16, 1928; August 20, 1928; and December 20, 1929.

Power Privilege Agreement - Joint contract between the United States, the District and the El Paso County Water Improvement District No. 1, dated May 10, 1928.

Storage system - Elephant Butte Dam and Reservoir and appurtenant works and the Caballo Dam and Reservoir and appurtenant works.

Power system - Power plants, transmission lines, etc., constructed for development of power.

Irrigation and Drainage system - All project works except the storage and power systems

Explanatory Recitals

Article 3. Whereas, the Interior Department Appropriation Act, fiscal year 1938, under the caption "Bureau of Reclamation," contains the following provision in the item for the Rio Grande project, New Mexico-Texas:

"Provided, That the Secretary of the Interior is hereby authorized to enter into a contract with the El Paso County Water Improvement District Numbered 1 and the Elephant Butte Irrigation District of New Mexico by which the districts will be relieved of the obligation of making payment of the construction cost chargeable to the development of power of Elephant Butte Dam in the amount determined as equitable by the Secretary of the Interior in return for the conveyance by the said two districts to the United States of all the district's right, title, interest, and estate in the use of said dam and other project works, including the project water supply, for the development of hydroelectric energy: Provided further, That in such contracts it shall be stated that the use of the dam, project works, and water supply for power purposes shall not deplete or interfere with the use thereof for irrigation purposes: Provided further, That the net earnings of the power plant and system belonging to the United States and any other available revenues shall be applied, until the cost thereof has been met, upon the cost of the power development, including (1) the cost of power facilities, (2) the amount invested as herein authorized, in the cost of Elephant Butte Dam, and (3) the amount invested by the Bureau of Reclamation in Caballo Dam: Provided further, That after the cost of the power development has been met the net earnings of the power plant and system shall be disposed of as Congress may direct."

Article 4. Whereas, the District desires to receive (1) the benefits of the provisions of the Interior Department Appropriation Act hereinbefore quoted and also (2) the benefits of the provisions of other acts of Congress relating to the repayment of charges in return for the conveyance by the District, for itself and the landowners therein, to the United States of all the right, title, interest, and estate of the District and its landowners in the use of said dam and other project works, including the project water supply, for the development of hydroelectric energy.

Now, Therefore, in consideration of the covenants herein contained, it is agreed between the parties as follows:

District Relieved of Obligation for
Construction Cost Chargeable to Power

Article 5. The equitable amount of the construction cost of the storage system (exclusive of Caballo Dam and reservoir) chargeable to power development, as determined by the Secretary and accepted by the District, is \$4,246,408.39, computed as follows:

Cost of Storage System (exclusive of Caballo Dam and reservoir)	
Elephant Butte Dam and reservoir	\$5,219,663.53
Related features - roads, etc.	26,744.86
	<u>\$5,246,408.39</u>
Less - Direct Appropriation (Non-reimbursable)	
Act of March 4, 1907 (34 Stat., 1357)	1,000,000.00
Balance chargeable to power development	\$4,246,408.39

The United States, pursuant to the provisions of the Interior Department Appropriation Act, fiscal year 1938, hereinbefore quoted, will and hereby does relieve the District of 56.7742 per centum of the amount herein fixed as the equitable amount of the construction cost chargeable to power development, or \$2,410,864.39, and will and hereby does reduce the District's obligation for the repayment of its share of the construction cost of the project from \$7,920,000, which the District assumed and agreed to pay to the United States under contract of June 27, 1906, as amended and supplemented, to \$5,509,135.61.

Operation and Maintenance Cost for Irrigation
and Drainage System, Calendar Year 1937,
Added to Construction Obligation.

Article 6. The notice issued February 11, 1937, to the District by the Secretary, pursuant to the provisions of the contract of June 27, 1906, as amended and supplemented, announcing the estimated cost of operating and maintaining that portion of the Rio Grande project irrigation and drainage system which is utilized for the benefit of lands within the District for the irrigation season of 1937 (calendar year 1937), and requiring the payment of a reservoir or storage charge for certain lands is hereby rescinded. In lieu thereof, the District's share of the cost of operation and maintenance of the irrigation and drainage system (exclusive of the storage system) for the calendar year 1937, estimated at \$170,000 will be added to and shall be payable with the reduced construction obligation fixed in Article 5 hereof. In the event that the District's share of

the actual cost of operation and maintenance during the calendar year 1937 as conclusively determined by the Secretary is less than the estimated amount thereof, the excess of estimate over cost will be credited as a reduction of the construction charge installment due and payable by the District to the United States, in the calendar year 1938; in the event that the District's share of the actual cost is greater than the estimated amount, the excess of cost over estimate will be added to the construction charge installment due and payable by the District to the United States in the calendar year 1939.

Interest on Construction Charges Deferred under the
Act of April 1, 1932, as Amended and Supplemented
Added to the Construction Obligation.

Article 7. Pursuant to the acceptance by the District of the Act of April 1, 1932, (47 Stat., 75), as amended and supplemented, extending the time of payment for all or part of construction charge installments for the years 1930 to and including 1936, the District is obligated to pay the United States interest charges in the amount of \$21,850.16. The District agrees to pay such interest charges to the United States as hereinafter provided as a part of the adjusted construction charge obligation.

District Assumes Payment of the Adjusted Construction
Obligation.

Article 8. The District assumes and agrees to pay the adjusted construction charge obligation of \$5,700,985.77, being the total of the items set forth in Articles 5, 6, and 7, above. It is understood and agreed that the District has paid to the United States construction charges aggregating \$1,762,473.85, and will on or before the execution by it of this contract, pay, with accrued penalties, the 1936 construction charge installment of \$154,800, due September 1, 1937, such payment to be made either by cash or by cash and credits. The aggregate amount of \$1,917,273.85 will be applied to the payment of the adjusted construction obligation of \$5,700,985.77, and the District agrees to pay the resulting balance of the construction charge obligation, viz., \$3,783,711.92 in fifty equal successive semi-annual installments, on March 1, and September 1 of each year commencing with the first payment due and payable March 1, 1938, and ending with the last payment due and payable on September 1, 1962, the installments for 1938 and 1939, however, being subject to possible adjustments as provided in Article 6 hereof.

Segregation of Project Features for Purposes of Operation
and Maintenance - 1937 and thereafter.

Article 9. The United States will continue the operation and maintenance of the project until otherwise provided. Beginning with the calendar year 1937, the operation and maintenance of the project will be segregated as (a) operation and maintenance of the storage system and power system, and (b) operation and maintenance of the remainder of the project, hereinafter referred to as the irrigation and drainage system.

Operation and Maintenance of Storage System for Delivery
of Irrigation Water.

Article 10. For the calendar year 1937, and thereafter during the period of the repayment of the remaining construction obligation of the District as fixed in Article 8 hereof, the District will pay to the United States, in lieu of regular operation and maintenance charges for the storage system, and in lieu of the storage water rental charges heretofore collected for lands not designated for payment of construction charges, a reservoir service charge of ten cents (10 cents) per acre-foot for each and every acre-foot of water, reasonably necessary for irrigation, made available for the lands of the District at the turnouts of the Elephant Butte dam, until the Caballo Dam is completed, thenceforth at the turnouts of the Caballo dam. Because of the requirement for the payment of the reservoir service charge as herein provided, the provisions of the contract between the District and the United States, and of the notice of February 11, 1937, given by the First Assistant Secretary to the District, requiring the payment of an annual storage water rental charge for the calendar year 1937 of fifty cents (50 cents) per acre for the total area within the District of lands not designated for commencing payment of construction charges shall be inoperative for the calendar year 1937, and such annual storage rental charges shall not be collected by the United States for subsequent years.

The officer of the Bureau of Reclamation in charge of the Rio Grande project will render on or before October 15, 1937, and on or before October 15 of each year thereafter, a statement to the District of the number of acre-feet turned out of the reservoir for the lands within the District and the amount due hereunder for the then preceding twelve months, and the District will pay the amount stated in such notice on or before the first day of March following rendition of the statement. Payments for such reservoir service shall continue for each year during the period of repayment of the remaining construction obligation of the District as provided in Article 8 hereof. For the year immediately following the year for which the last installment of the adjusted construction obligation is payable, and for each succeeding year thereafter, the Secretary will make an equitable determination of the District's share of the estimated cost of operating and maintaining the storage system for irrigation purposes and the amount so determined shall be included in and combined with the annual estimate of operation and

maintenance of the irrigation and drainage system and shall be due and payable at the same time and in like manner as provided in Article 11 hereof.

Operation and Maintenance for 1938 and Thereafter Payable^u
in Advance.

Article 11. The period during which the United States continues after January 1, 1938, to operate and maintain the Rio Grande project for and within the District, will hereinafter be referred to as the Government maintenance period. The District will, during the Government maintenance period, pay to the United States in advance the estimated cost of operating and maintaining that portion of the project, other than the storage and power systems, which is utilized for the benefit of lands within the District. Such estimated cost for the calendar year 1938 is \$175,000, of which the amount of \$32,620 shall be due and payable on or before December 15, 1937 and the amount of \$81,700 thereof shall be due and payable on or before February 15, 1938, and the remainder thereof in the amount of \$60,680 shall be due and payable on or before July 15, 1938. Each year thereafter during the Government maintenance period the annual estimated cost shall become due and payable in the following manner: On or before September 1, 1938 and on or before September 1, of each subsequent calendar year during the Government maintenance period, the Secretary will notify the District of the amount of the District's proportion of the estimated operation and maintenance cost (including all necessary equipment, materials and supplies, proper overhead and general charges) in operating and maintaining the project works, other than the storage and power systems, during the calendar year next succeeding the year in which the notice is given. Such notice will state the District's share of such estimated cost (a) for the first two months of the calendar year next succeeding, (b) for the five next succeeding months, and (c) for the remaining five months of the calendar year for which notice is given. The amount stated for the first two months of the calendar year shall be due and payable on or before December 15 of the year in which the notice is given; the amount stated for the next succeeding five months shall be due and payable on or before February 15 of the calendar year next succeeding the year in which the notice is given; and the amount stated for the last five months of the calendar year shall be due and payable on or before July 15 of the calendar year next succeeding the year in which the notice is given. As soon as practicable after the close of the calendar year for which notice of the estimated cost of operation and maintenance is given, the District will be furnished a statement of actual cost of such operation and maintenance and the District's proportionate share thereof, and any excess of payment upon the basis of estimated costs over actual costs shall be credited upon the payment due and payable by the District on July 15 next succeeding such calendar year. If in the opinion of the Secretary the estimate of such operation and maintenance cost appears to be insufficient to meet the actual cost thereof he shall give notice of such threatened deficiency and his estimate of the amount thereof and the District's share thereof, and the District shall pay to the United States its

proportion of the amount of such deficiency within 15 days from the date of such notice. Should the District fail to make payment of any operation and maintenance charges at the time and in the manner above provided, the United States will be under no further obligation to deliver water to any land within the District, beyond funds available therefor.

District to Receive Credit for Water Rental Collections
from Hudspeth County Conservation and Reclamation District.

Article 12. Pursuant to subsection J of section 4 of the Act of December 5, 1924 (43 Stat., 703), collections of water rental charges under the contract between the United States and the Hudspeth County Conservation and Reclamation District No. 1, dated December 1, 1924, as heretofore or hereafter amended and supplemented, during the calendar year 1937, and annually thereafter, will be credited to the District's obligations as follows: The District's pro rata share thereof as conclusively determined by the Secretary will be segregated by construction component and operation and maintenance component as also conclusively determined by the Secretary. The construction component will be credited to the payment of the District's construction charge installment next due and payable after the collection of such water rental charge is made from the Hudspeth District, and the operation component will be credited to the payment of the District's operation and maintenance payment next due and payable after the collection of such water rental charge is made from the Hudspeth District.

Irrigation use of Project Water Supply is Primary Use.

Article 13. In carrying out the provisions of this contract the United States shall operate the Elephant Butte Dam and other power works connected therewith, including the project water supply for power purposes so as not to deplete or interfere with the use thereof for irrigation purposes. The storage works will be operated primarily for irrigation purposes and water is not to be released from Elephant Butte reservoir for the development of power except to the extent that such water may be retained in the Caballo reservoir until needed and released for irrigation purposes. Water thus intercepted and stored in the Caballo reservoir shall not be released therefrom in excess of releases estimated to be reasonably necessary to meet the requirements for irrigation purposes, for treaty allowances to the Republic of Mexico as provided in the treaty proclaimed January 16, 1907, and for flood control needs. Nothing in this contract shall ever be construed or interpreted so as to alter, diminish, or impair the right of project land owners to such water rights as may be or become appurtenant to their lands under the Federal Reclamation Laws and under the original contracts entered into between the original water users' association on this project and the United States.

Designation of Areas Subject to Construction Charges
No Longer Necessary.

Article 14. Because of the change in the relations between the District and the United States as herein provided regarding the payment of the adjusted construction charge obligation, the parties hereto hereby rescind the provisions of Article 7 of the contract of June 15, 1918, among the district, the Elephant Butte Water Users Association and the United States, and similar provisions of later contracts between the District and the United States so far as said provisions require that, from time to time, as the Secretary may determine that specified areas of irrigable district lands, not necessarily contiguous, should commence the payment of the construction charge of the irrigation works, he shall render a statement to such effect to the district, designating the areas of said district lands, stating the amount of the construction charge payable for such designated areas.

Additional Construction Work

Article 15. The United States will continue with the construction of the irrigation and drainage features of the project, contingent upon appropriations therefor being made available by Congress, to the extent that the District's adjusted construction charge obligation will permit. It is understood that, if for any reason the total construction cost chargeable to District lands is less than the District's adjusted construction obligation, the District will be relieved of the payment of such excess through a reduction to the extent of such excess of the construction charge installments payable at the end of the repayment period fixed herein, such reductions being applicable on said construction charge installments in the inverse order of due dates.

United States to Perform Work with Contributed Funds

Article 16. Pursuant to the Act of Congress of March 4, 1921 (41 Stat., 1367, 1404) the United States during the Government maintenance period will perform with funds contributed by the District and betterment or additional maintenance work on the project as may be deemed necessary by the District and approved by the Secretary. Before undertaking any such work the United States will be furnished with the necessary contributed funds, in one or more installments as may be agreed upon, accompanied by a certified copy of a resolution of the board of directors of the District, setting forth the nature of the work desired and authorizing its performance with such contributed funds. Upon the completion of the work so authorized, the District will be furnished with a statement of the cost thereof, and any unexpended balance of such contributed funds will be refunded to the District or applied otherwise as the District may direct.

Cancellation of Power Privilege Agreement

Article 17. The District and the United States hereby rescind that certain Power Privilege Agreement described in Article 2 hereof.

District Conveys Power Interests

Article 18. The District for itself, and its water users and land owners and for its and their successors and assigns, does hereby convey, and grant to the United States all of its and their claims of right, title, interest and estate, present and prospective in the use of the Elephant Butte Dam and other project works, including the project water supply, for the development of hydroelectric energy by the United States: Provided that the use of said dam, project works and water supply for power purposes shall not deplete or interfere with the use thereof for irrigation purposes: and Provided further, That the net earnings of the power plant and system belonging to the United States and any other available revenues accruing to the United States by reason of Government ownership of the power plant and system shall be applied in accordance with the provisions of the item in the Interior Department Appropriation Act, fiscal year 1938, as set out in Article 3 hereof.

The validity of the conveyance to the United States as contained in this Article, is of the essence of this agreement. A contract similar to this (hereinafter referred to as the El Paso contract) is being made coincidentally with the El Paso County Water Improvement District No. 1, containing the portion of the Rio Grande Federal Reclamation project that lies in the State of Texas, and the El Paso contract contains an article similar to Article 18 hereof. Should the conveyance to the United States in Article 18 hereof, or in the similar article of the El Paso contract, ever be held invalid or ineffective in whole or in part, as to either district, or as to any water user or landowner or group of landowners in either or both districts, the Secretary may, by notice to the District, terminate this agreement, whereupon the rights and obligations of the parties hereto shall be reinstated, so far as practicable, as if this agreement had not been made. Any landowner of the district, or any holder of a mortgage or lien upon land in the district, who does not object to the confirmation of this contract by the courts shall be estopped thereafter to question the validity of this conveyance. Likewise any landowner of the district, or any holder of a mortgage or lien upon land in the district, who accepts the benefits of this agreement in the reduced construction installments permitted hereby, shall be deemed conclusively to have accepted this agreement and to have acceded to the conveyance herein made, so far as his land or interest is concerned.

Agreed Charges a General
Obligation of the District.

Article 19. The District is obligated to pay to the United States the full amounts herein agreed upon according to the terms stated, notwithstanding any individual default in the payment of any assessments, tolls or charges levied by the District to secure funds to meet charges due to the United States.

District to Use All Powers
to Collect.

Article 20. All construction and operation and maintenance charges due to the United States hereunder shall be paid as required by this contract to the proper fiscal officer of the United States. The amounts due the United States shall be a first charge upon the collections of said district. The District agrees that it will cause to be levied and collected all necessary assessments, including a sum to cover (1) any individual collection delinquency for past years and (2) estimated individual collection delinquency for the year for which assessments are being levied, and will use all powers and resources of the District, including the taxing power of the District and the power to withhold delivery of water, to collect and pay to the United States all charges provided for in this contract in full on or before the day that the same become due.

No Water to be Delivered
Without Payment.

Article 21. Pursuant to the provisions of Section 6 of the Act of Congress of August 13, 1914, (38 Stat, 686) no water shall be delivered to or for any tract of land receiving water through the project works, the owner or holder of which shall be in arrears for more than one (1) year for the payment of any charge for operation and maintenance, or any annual construction charge, and penalties, or any assessments levied by the District for the purpose of paying construction or operation and maintenance charges, or who after the beginning of the year 1938 shall fail to pay in advance the annual operation and maintenance charges.

Water Users Accepting Benefits of Contract Estopped

Article 22. It is understood that the consideration hereof running to the District is the benefit conferred under the provisions of the act set out in Article 3 hereof and of the acts of December 5, 1924 and May 25, 1926, and that any landowner or water user of the District who accepts any such benefits under the terms hereof shall be estopped to disclaim any part of the obligation of the district

hereunder. If (a) in any court action at the instance of the district or of any of its officers, land owners or water users, this contract or any of its provisions are held to be void, so that in the opinion of the Secretary the contract becomes substantially incapable of performance, or if (b) in any court action at the instance of El Paso County Water Improvement District No. 1 or of any of its officers, land owners or water users, the El Paso contract, as defined in Article 18 hereof, or any of its provisions are held to be void, so that in the opinion of the Secretary that contract becomes substantially incapable of performance, the district and its land owners or water users shall revert to the terms and conditions of the contract of June 27, 1906, as amended and supplemented with like effect as though this contract had never been executed.

Payment of Interest Charges

Article 23. Upon every sum of money required to be paid to the United States by this contract and not paid when due, interest at the rate of six (6) per centum shall be added from the due date until the date of payment, and the district hereby agrees to pay such interest.

Secretary Arbiter of Questions of Fact

Article 24. Whenever in this agreement an estimate or determination of fact is required or any question of fact is left undetermined by the provisions hereof, the Secretary shall make any and all such estimates and determinations of fact and decisions upon any and all questions of fact which may arise hereunder, and the Secretary's estimate, determination or decision thereof or thereon shall be binding and conclusive upon the parties to this agreement.

Access to Books and Records

Article 25. 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 United States relating to the construction, acquisition, care, operation and maintenance of the irrigation and drainage works, with the right at any time during office hours to make copies of, or from, the same or any of them, and the proper representatives of the United States shall have similar rights in respect to the accounts books and records of the District.

Election and Confirmation

Article 26. The execution of this contract shall be authorized by the qualified electors of the district at an election held for that purpose and thereafter the District shall prosecute to final decree, proceedings in a court of competent jurisdiction for the confirmation of this contract. The United States shall not be required to proceed under the terms of this contract until (1) a confirmatory final judgment in such proceeding shall have been finally rendered, and (2) the El Paso contract shall have been authorized at an election and confirmed by the courts of the State of Texas. The District shall furnish the United States certified copies of all proceedings relating to said election and confirmation proceedings.

Reversion to Contract of June 27, 1906 as Amended
and Supplemented on Failure of This Contract.

Article 27. In the event of a failure of the authorization of this contract at an election called for that purpose or in confirmation proceedings subsequently brought, this contract shall be void and of no effect and the parties hereto shall revert to the contract of June 27, 1906 as amended and supplemented with like effect as though this contract had never been executed.

This contract is also not to become effective for any purpose unless and until the El Paso contract, as defined in Article 18 hereof, is voted and confirmed and becomes effective.

Provisions of the Contracts as Amended and Supplemented
Shall Remain Effective.

Article 28. This agreement is supplemental to the contract of June 27, 1906 as amended and supplemented, and it is agreed that the terms and conditions thereof shall remain unaffected by the provisions hereof, except as they are modified by said provisions.

Remedies Saved to the United States

Article 29. The mention of any remedies of the United States herein or in such contract of June 27, 1906 as amended and supplemented, for breach of any of said contracts shall not be understood to exclude the United States from any other remedy which it may have, and it is further understood that 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.

Officials Not to Benefit.

Article 30. No member or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or any benefit to arise therefrom. Nothing, however, herein contained, shall be construed to extend to any incorporated company, if the contract be for the general benefit of such corporation or company.

IN WITNESS WHEREOF, the parties have hereto subscribed their names, the day and year first above written.

THE UNITED STATES OF AMERICA

By (Signed) Oscar L. Chapman
Assistant Secretary of the Interior

ELEPHANT BUTTE IRRIGATION DISTRICT

By (Signed) Arthur Starr
President

(SEAL)

Attest: (Signed) Jose R. Lucero
Secretary

C O N T R A C T

This contract made and entered into by and between the Elephant Butte Irrigation District of New Mexico and El Paso County Water Improvement District No. 1 of Texas, pursuant to resolutions of the Board of Directors of the respective Districts, authorizing the same, WITNESSETH THAT:

WHEREAS, it is expedient that the acreage within each irrigation District which is to be irrigated should be cushioned by allowing the distribution of water to a small excess of acreage over and above that allotted to the two Districts under the Rio Grande New Mexico-Texas Reclamation Project, to the end that annual variations, within narrow limits, shall be permitted, and so that, each year, there will be within the Elephant Butte Irrigation District 88,000 acres of land, and within El Paso County Water Improvement District No. 1, 67,000 acres upon which construction and operation and maintenance charges may be levied;

THEREFORE, it is mutually agreed that either District may increase the acreage to be irrigated and to be subject to construction charges, not to exceed three (3%) per cent of the present authorized acreage in each District, that is to say, Elephant Butte Irrigation District, having an authorized acreage of 88,000 acres, may increase such acreage to the extent of three (3%) per cent thereof, amounting to not to exceed 2,640 acres; that El Paso County Water Improvement District No. 1, having a present authorized acreage of 67,000 acres, may increase such acreage to three (3%) per cent thereof, that is, not to exceed 2,010 acres, said additional lands, in any case, to be within the limits of the present irrigation Districts or any future extensions thereof.

It is further agreed and understood that in the event of a shortage of water for irrigation in any year, the distribution of the available supply in such year, shall so far as practicable, be made in the proportion of 67/155 thereof to the lands within El Paso County Water Improvement District No. 1, and 88/155 to the lands within the Elephant Butte Irrigation District.

It is further agreed and understood that the operation and maintenance costs of the project works (exclusive of the storage and power development) for the calendar year 1938 and thereafter shall be distributed between the two Districts in the same manner as similar costs were distributed for the calendar year 1937, and that the same ratios for the two Districts, respectively, that were applied to said costs for that year common to both Districts shall be used in 1938 and subsequent years.

This contract to be effective only during the period when the proposed contracts under Public No. 249, Seventy-fifth Congress, 1st Session, between, (1) the United States and Elephant Butte Irrigation District and (2) the United States and El Paso County Water Improvement District No. 1 are in force, and if either or both of said contracts should terminate after both have become effective, this contract is also to terminate.

IN TESTIMONY WHEREOF, the parties herunto have caused the same to be signed by the Presidents of their respective Boards of Directors, and attested by the Secretary with the seal of said corporation,

this 16 day of February, A. D. 1938.

THE ELEPHANT BUTTE IRRIGATION DISTRICT
OF NEW MEXICO.

Copy

By *Arthur Seaman*
President

(SEAL)

ATTEST: *Jose R. Lucas*
Secretary, Elephant Butte
Irrigation District.

EL PASO COUNTY WATER IMPROVEMENT DISTRICT
DISTRICT NO. 1 OF TEXAS.

By *T. D. Poister*
President

(SEAL)

ATTEST: *John T. Julett*
Secretary, El Paso County Water
Improvement District No. 1.

Copy

APPROVED THIS 11 DAY OF April, A. D. 1938.

Oscar L. Chapman
Assistant SECRETARY OF THE INTERIOR

Signatures copied from original