

No. *U.S. 509-2*

Office of State Engineer
DOCUMENT FILE

*Bureau of Reclamation
Rapid Valley Project*

Sec. 581-2

CERTIFICATE OF WITHDRAWAL
of
WATER FOR APPROPRIATION
to the
UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
~~BUREAU OF RECLAMATION~~

Rapid Valley Project
Name of Project

Water Division No.2
Rapid Creek Water District
Sagehen Creek Appropriation-Stream

~~Pennington, South Dakota~~
County

The United States of America, Department of ~~the Interior~~ ^{Bureau}
~~of Reclamation~~, having filed "Notice of Intention" to
utilize certain heretofore unappropriated public waters of the State of South
Dakota, in accordance with the requirements of the statutes of the State of South
Dakota, such statutes and authority being contained in Section 61.0137 1939
Revised Code of South Dakota, now therefore:

This is to certify that there is hereby reserved, of the heretofore unappropriated waters of _____, the annual amount of 40,000 acre-feet of water to maintain storage in the proposed Pactola reservoir created by damming said stream at a point in the S.W. 1/4 of Section 7 feet distant from the Corner of Section 7 Township 1N., Range 5E. N.H.U.
The purpose of such storage is Irrigation, Domestic, Stockwatering, Mining, Milling,
Power and other beneficial uses.

This is to certify that there is hereby reserved, of the heretofore unappropriated waters of _____ a maximum of _____ cubic feet per second to be diverted through the _____ ditch, canal or pipe line at a point located on the _____ bank _____ feet distant from the _____ Corner of Section _____ Township _____, Range _____ for the purpose of _____ during the months of _____.

This certificate and withdrawal shall in no manner prejudice, alter, amend or affect the rights of any prior appropriator or prior appropriation of water, nor of any application for appropriation pending on the date of this certificate, but the rights and privileges of any and all such prior appropriators or applicants for appropriation of water shall remain inviolate and intact, the same as if the within withdrawal had not been made.

This certificate shall be and is subject to cancellation in accordance with the provisions of the statutes hereinbefore referred to and under the authority of which this certificate is issued.

In accordance with the provisions of the statutes heretofore referred to, this certificate is executed at the State Capitol at Pierre, South Dakota, this 1st day of December 1938.

State Eng. No. 1

CERTIFICATE OF WITHDRAWAL
of
WATER FOR APPROPRIATION
to the
UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Withdrawal No. U.S. 509
Supplemented

Rapid Valley Project
Pennington County, South Dakota

Water Division No. 2
Rapid Creek Water District
Rapid Creek and Its Tributaries

The United States of America, Department of the Interior, Bureau of Reclamation, on December 1, 1939, having filed "Notice of Intention," as amended and supplemented by notice dated July 3, 1941, and filed with the State Engineer of the State of South Dakota on July 10, 1941, and as further amended and supplemented by notice dated August 19, 1942, and filed with the State Engineer of South Dakota on Aug. 24, 1942 to utilize certain theretofore unappropriated public waters of the State of South Dakota, in accordance with the requirements of the statutes of the State of South Dakota, particularly section 61.0137, South Dakota Code, 1939;

NOW, THEREFORE:

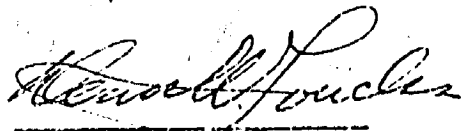
This is to certify that effective December 1, 1939, there is hereby withdrawn and reserved of the theretofore unappropriated waters of Rapid Creek and its principal tributary, Castle Creek, and the tributaries of each of said Creeks, all the unappropriated waters of each thereof and their sources of supply, including definite streams and water courses, and including natural springs now or hereafter subject to appropriation, for utilization in

connection with that certain Federal water conservation and utilization project, known as the Rapid Valley Project, authorized to be constructed under the Act of Congress of August 11, 1939 (53 Stat. 1418), as amended by the Act of Congress of October 14, 1940 (54 Stat. 1119), as said Project has been modified since December 1, 1939, and as it hereafter may be modified from time to time: Provided, That if any waters for the project, as reauthorized under the Acts of August 11, 1939, and October 14, 1940, above cited, were not withdrawn under Withdrawal No. U. S. 509, issued December 1, 1939, as that withdrawal is construed in connection with the State Engineer's acceptance of the Aended and Supplemental Notice of Intention of July 3, 1941, then this certificate is to further certify that there is hereby withdrawn and reserved as of Aug. 24, 1942, any of such waters for the project. The withdrawal and reservation of the waters of said Creeks and their tributaries, which is hereby evidenced, covers all unappropriated natural, developed, and augmented waters of said Creeks and their tributaries and their sources of supply, including definite streams and water courses, and natural springs now or hereafter existing, and including but not limited to, all the abandoned waste, seepage, and return flow waters from any operations or uses through, by means of, or in connection with said Project, or otherwise.

This certificate and withdrawal shall in no manner prejudice, alter, amend or affect the rights of any appropriator or appropriation of water prior to December 1, 1939, nor of any application for appropriation pending on December 1, 1939, but the rights and privileges of any and all such prior appropriators or applicants for appropriation of water shall remain inviolate and intact, the same as if the within withdrawal had not been made.

This certificate shall be and is subject to cancellation in accordance with the provisions of the statute hereinbefore referred to and under the authority of which this certificate is issued.

In accordance with the provisions of the statute hereinbefore referred to, this certificate is executed at the State Capitol at Pierre, South Dakota, this 14th day of August, 1942.



State Engineer

STATE OF SOUTH DAKOTA

UNITED STATES WITHDRAWAL WATER LICENSE NO. 509-2
DEERFIELD RESERVOIR - RAPID VALLEY PROJECT

(1) WHEREAS, The Bureau of Reclamation, United States of America has filed the following notice of intent to appropriate water:

*(a) "NOTICE OF INTENTION TO THE STATE ENGINEER OF THE STATE OF SOUTH DAKOTA" to divert, store and appropriate water for the Rapid Valley Project, South Dakota filed December 1, 1939;

*(b) "AMENDED AND SUPPLEMENTAL NOTICE OF INTENTION TO THE STATE ENGINEER OF THE STATE OF SOUTH DAKOTA", pertaining to Rapid Valley Project, South Dakota, filed July 7, 1941;

*(c) "AMENDED AND SUPPLEMENTAL NOTICE OF INTENTION TO THE STATE ENGINEER, STATE OF SOUTH DAKOTA", pertaining to Rapid Valley Project, filed August 24, 1942; and

(2) WHEREAS, The State Engineer on August 24, 1942, certified in "CERTIFICATE OF WITHDRAWAL OF WATER FOR APPROPRIATION TO THE UNITED STATES OF AMERICA, Withdrawal No. U.S. 509-2, Supplemented" (Supplemental to that *Certificate issued December 1, 1939) that effective December 1, 1939 (with qualification) there is hereby withdrawn and reserved of the unappropriated waters of Rapid Creek and its principal tributary, Castle Creek all unappropriated waters for the Rapid Valley Project and

(3) WHEREAS, It is hereby certified that the United States of America has completed construction of the Deerfield Reservoir on Castle Creek, having storage capacities as follows: dead storage 565 acre-feet, active storage 15,153 acre-feet, total storage being 15,718 acre-feet, the United States of America is entitled to an initial water storage fill of 15,718 acre-feet of water in Deerfield Reservoir and an annual replenishment of storage to the top of the active storage space plus evaporation and natural water losses; and

(4) WHEREAS, It is hereby certified the United States of America has made application of water to beneficial use of the following extent:

(a) Up to 7000 acre-feet of water stored in Deerfield Reservoir may be released for the use of the Municipality of Rapid City, South Dakota, and environs, including Ellsworth Air Force Base, and as provided in that *Contract dated July 27, 1943, between the United States, Rapid City, South Dakota, and the Rapid Valley Conservancy District;

(b) Up to 8000 acre-feet of water stored in Deerfield Reservoir may be released for the use of Rapid Valley Water Conservancy

District, boundaries of which are shown in *Map of Rapid Valley Water Conservancy District, prepared by the State Water Resources Commission, April 1965, with additional information being provided in *Map No. 583-602-13 of the Bureau of Reclamation, entitled "MISSOURI RIVER BASIN PROJECT - CHEYENNE DIVISION - S. DAKOTA - RAPID VALLEY UNIT" and as provided in the above specified Contract, dated July 27, 1943.

(5) NOW THEREFORE, By virtue of the authority vested in us by the laws of the State of South Dakota, we hereby grant and confirm to the United States of America, United States Withdrawal Water License No. 509-2, a water right dating from December 1, 1939 to store water annually in Deerfield Reservoir on Castle Creek in the County of Pennington and State of South Dakota, or so much thereof as may be necessary for the purposes herein below mentioned, to be diverted at a location in the NE $\frac{1}{4}$, SW $\frac{1}{4}$, Section 20, T1N, R3E, B1M, and conducted to and upon the locations described in Section (4) of this Water License No. 509-2, for the purpose of irrigation, recreational and municipal, including industrial and commercial use, plus incidental silt detention, water quality, fish and wildlife habitat, domestic, livestock watering and other beneficial uses, with municipal and recreation being year around use and irrigation being used in the May 1 to October 1 annual period.

Subject to the following qualifications:

Flows (not exceeding inflows) shall be released as needed for downstream domestic use, including livestock watering, and prior downstream water right use;

The initial reservoir filling (15,718 acre-feet) having been accomplished, the authorized annual storage replenishment shall be equal to that volume of water needed to bring the reservoir water surface to the top of the active conservation storage space, elevation 5906 feet, Bureau of Reclamation *Drawing 252-600-1, "DEERFIELD RESERVOIR AREA AND CAPACITY CURVES", revision, 600 dated 2-13-67.

WITNESS, My hand and seal of our office
at Pierre, South Dakota this _____ day
of _____ A.D.
Nineteen Hundred and _____.

WATER RIGHTS COMMISSION

By:

DONALD BRISCOLL, Chief Engineer
and Executive Officer

* Indicates specified document is filed in U.S. Withdrawal File No. 509-2.

" *Grandfield Contract* "

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

RAPID VALLEY PROJECT, SOUTH DAKOTA

CONTRACT BETWEEN THE UNITED STATES, RAPID CITY, SOUTH
DAKOTA, AND THE RAPID VALLEY WATER CONSERVANCY DISTRICT

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

RAPID VALLEY PROJECT, SOUTH DAKOTA

CONTRACT BETWEEN THE UNITED STATES, RAPID CITY, SOUTH DAKOTA, AND THE RAPID VALLEY WATER CONSERVANCY DISTRICT

THIS CONTRACT, made this 27 day of July, 1941, pursuant to the Act of August 11, 1938 (53 Stat. 1418), and Acts amendatory thereof and supplemental thereto, herein referred to as the Act, and specifically the Act of October 14, 1940 (54 Stat. 1119), herein referred to as the Amendatory Act, between the UNITED STATES OF AMERICA, herein styled the United States, acting by and under the Secretary of the Interior, herein styled the Secretary, and (1) RAPID CITY, SOUTH DAKOTA, herein styled the Municipality, a municipal corporation organized and acting under the laws of South Dakota, and (2) RAPID VALLEY WATER CONSERVANCY DISTRICT, herein styled the District, a water conservancy district organized and acting under the laws of the State of South Dakota;

WITNESSETH:

2. WHEREAS, THE Rapid Valley Federal Water Conservation and Utilization project, herein styled the project, has been authorized for construction under said Amendatory Act for the storage, diversion and beneficial use of the waters of Rapid Creek and its tributaries; and

3. WHEREAS, the District and the Municipality desire that the United States, pursuant to said Act and Amendatory Act, construct said project in order to make a water supply available to the District and the Municipality, and

4. WHEREAS, the authorization of the project and the plan for carrying out the project have been predicated on the assumption by the Municipality of certain obligations hereunder, which obligations are dependent on a priority to a certain quantity of water from particular reservoir, and

5. WHEREAS, in the judgment of the Secretary this contract, by reason of the premises, will not impair the efficiency of said project for irrigation purposes; and

6. WHEREAS, the Municipality and the District desire to contract with the United States for repayments pursuant to the provisions of, and allocation of returnable costs under said Amendatory Act.

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

Works to be Constructed by the United States

8. The project works to be constructed by the United States will include, without being limited by reason of this enumeration:

(a) A dam and storage reservoir, with dam site in Section 20,

Township 1 North, Range 3 East, B.H.M., and a reservoir

of approximately 15,000 acre-feet capacity and works incidental thereto, together with lands and rights-of-way therefor: Provided, That the expenditure of monies, from appropriations made directly pursuant to the authority contained in Section 12 (1) of the Amendatory Acts plus such amounts from other Federal sources as the President may determine to be reimbursable, for the works described in this subdivision (a) shall not exceed \$500,000; and (b) Other dams and reservoirs suitable and feasible for the additional storage of the waters of Rapid Creek and its tributaries for irrigation use, and drainage works as herein provided: Provided, That no works proposed to be undertaken by the United States under this subdivision (b) shall be undertaken unless (i) the Secretary shall have advised the District of the work proposed to be undertaken and of the estimated cost thereof; (ii) the District, by resolution, shall have assented thereto; and (iii) actual construction thereon shall have been commenced within 10 years from the date hereof or such later date as may be fixed by the Secretary but in no event later than 20 years from the date hereof; the Provided further, That the expenditure of monies from appropriations made directly pursuant to the authority contained in Section 12 (1) of

the Amendatory Act plus such amounts from other Federal sources as the President may determine to be reimbursable for the works described in this subdivision (b) shall not exceed \$600,000.

The works above described are only tentatively determined upon and may be changed in location or works may be eliminated from or added thereto, in the discretion of the Secretary whose decision thereon shall be final: Provided, That no substantial changes in the works above described shall be made until after consultation with the party or parties interested in the works affected by the proposed changes. All of the works above described in subdivision (a), together with the lands and rights-of-way therefor above-mentioned, including additions to or works substituted for such works, ~~are~~ herein referred to as the joint works; all of the works provided for in subdivision (b) above, together with the lands and rights-of-way therefor, are herein referred to as the irrigation works; and the works above described in subdivisions (a) and (b), together with the lands and rights-of-way therefor and including works added thereto or substituted therefor, are collectively herein referred to as the project works.

Expenditures for Construction of Project Works

9. Subject to the provisions of Article 8 of this contract the United States agrees to commence construction of the joint works

and to continue the investigations and plans for the irrigation works, and, after further investigation and planning and with the assent of the District as provided in Article 8 (b), to commence construction of the irrigation works: Provided, That to the extent operations under this contract extend beyond the fiscal year in which this contract is executed, the obligation of the United States under this contract after the expiration of such fiscal year are contingent on Congress making the necessary appropriations for the fulfillment of such obligation: Provided further, That the United States shall not be obligated to expend toward the construction of the project works or any thereof in any one fiscal year out of funds appropriated by Congress pursuant to the Act and the Amendatory Act an amount exceeding the sum determined by the Secretary as the limit of expenditures from said funds for said project works or any thereof in such fiscal year.

Performance of work with Contributed Funds

10. The United States will perform with funds contributed by the Municipality or District any construction or maintenance work on the project not otherwise provided for by this contract, or any construction work covered by this contract but for which funds may not be available: Provided, That the plans therefor must be approved by the Secretary and it is found by him that acceptance of such funds will not impair the title of the United States to the project works

nor materially impair the Municipality's or District's ability to meet its obligations under this contract. When the undertaking of such work is approved, funds therefor shall be advanced by the Municipality or District as may be directed by the Secretary, and there shall be submitted to the Secretary a certified copy of the ordinance of the Board of Commissioners of the Municipality or resolution of the Board of Directors of the District describing the work to be done and authorizing its performance with contributed funds. When the funds so advanced in any case in this article provided for have been exhausted no further work shall be done pursuant to this article unless and until additional funds have been advanced by the Municipality or District for the continuation of such work.

After completion of any work so undertaken the Municipality or District will be furnished with a statement of the cost thereof as conclusively determined by the Secretary; and any unexpended balance of the funds will be refunded to the Municipality or District or applied as otherwise directed by the Municipality or District.

Conditions Precedent to Commencement or Continuance of Construction

11. The United States shall be under no obligation to commence or having commenced to continue: (a) The construction of the project works or any part thereof until the conditions precedent to actual construction, as provided by law, have been met, or (b) the construction

of irrigation works until the District, in the judgment of the Secretary, has made sufficient progress towards compliance with the provisions in Article 28 hereof to justify commencing or continuing construction thereof.

Terms of Repayment by the Municipality of the Construction

Cost Allocated to the Municipality

12. (a) For its supply of water hereunder, the Municipality shall pay to the United States the sum of \$500,000, which has been fixed pursuant to the Amendatory Act as the amount of the construction cost of the project allocated to municipal water supply: Provided, That the total obligation of the Municipality shall in no event exceed the total cost of the joint works as finally determined by the Secretary. The Municipality's total obligations above defined shall be paid in 40 successive, equal, annual installments of \$12,500. each: Provided, That if the total obligation is determined to be less than \$500,000. as above provided, installments remaining unaccrued after such determination shall be adjusted so that the unaccrued balance will be payable in successive, equal, annual installments, as nearly as practicable, over the remaining repayment period. Payment of those installments shall be made on or before May 1 of each year beginning May 1 of the year immediately succeeding the year in which water first becomes available for delivery to the Municipality as provided in Article 16 (b) hereof.

(b) If construction of said joint works is abandoned prior to the completion thereof by reason of the failure of the Municipality to perform those things on its part to be performed under the terms of this agreement, then the Municipality shall pay to the United States all monies expended from appropriations made directly pursuant to the authority contained in Section 12 (1) of the Amendatory Act plus such amounts from other Federal sources as the President may have determined to be reimbursable in the partial construction of said joint works in 40 successive, annual installments, the first of which shall become due and payable on December 31 of the year following the year in which construction of said joint works is abandoned.

(c) The obligations of the Municipality under subdivisions (a) and (b) of this article are hereby declared to be the general obligations of the Municipality.

District's Obligations Respecting the Costs
of the Joint Works

13. (a) The District shall pay to the United States on May 1 of each year such charge per acre foot or other charge as may be fixed by the Secretary for water refused for delivery to the District under its rights defined in Article 15 hereof the receding water year of the District: Provided, That this charge shall not exceed one dollar (\$1.00) per acre foot.

(b) All revenues received by the United States under this article shall be cumulated until the works described in Article 8 (b)

hereof have been commenced or it has been determined, as therein provided, that such works will not be undertaken under this contract. All such cumulated revenue and revenues thereafter received under this article shall be applied as follows:

(i) From such commencement, first, to the District's obligation under Article 20 until fully satisfied, and secondly, against the excess of actual cost of the joint works over the Municipality's obligation under Article 12, exclusive of the administrative expenses incurred in the District of Columbia in connection with the investigation, construction or operation and maintenance of the project. Such application to the District's obligation shall be, first, on the installments thereof in the inverse order in which they come due until all installments are paid which accrue subsequent to May 1 of the fifth year that in which the last installment accrues on the Municipality's obligation under Article 12 (a), and secondly, against the current installments in the order they come due.

(ii) After a determination that the works are not to be undertaken, against the actual cost of the joint works over and above the obligation of the Municipality under Article 12 hereof exclusive of administrative expenses in the District of Columbia

in connection with the ^U~~I~~vestigation, construction or operation and maintenance of the project.

(c) When the said actual costs of the joint works in excess of the Municipality's obligation have been returned to the United States in full the District's obligation under this article shall cease.

Execution of Agreement of Municipality

14. The Board of Commissioners of the Municipality shall, in the manner provided by law:

(a) Submit this contract and the debt incurred hereunder to a vote of the majority of the electors of said municipal corporation; and

(b) If said contract and debt is approved at such election:

(i) Provide for the execution of this agreement; and

(ii) Provide by ordinance for the payment of each annual installment due the United States as provided in Article 12 hereof from revenues received from the sale of water obtained under Article 15 hereof, exclusive of revenues received under Article 13 hereof. In the event said revenues are insufficient to meet each annual installment due the United States, the Municipality will levy, or provide for the levy, of an annual tax upon taxable property within the Municipality in such an amount as will pay such

deficit in the payment of each such annual installment due the United States. Said tax shall be levied and collected in like manner as in the case of the annual tax levy in the annual appropriation ordinance

(c) All revenues received by the Municipality from the sale of water, exclusive of the portion thereof required for the operation and maintenance of that part of the Municipality's water system under its control and exclusive of revenues received under Article 18 hereof, and the amount of any tax collected shall be placed in a special fund to be known as the 'United States Contract Fund.' No part thereof shall be used by the Municipality for any purpose other than to discharge its obligations to the United States under this contract.

Rights of Municipality and District to the Use of the Water
Supply Made Available through the Joint Works

15. (a) All water that becomes available through the construction and operation of the joint works shall be available to the Municipality and the District in accordance with their respective rights thereto as hereinafter defined, and shall be delivered to each at the lower end of the outlet works of the storage facilities of the joint works or at such place or places as the Secretary may designate.

(b) In determining the relative rights of the United States, the Municipality, and the District in the water supply from the joint works, the term

(i) "Season's water supply" shall mean the volume of water in storage in the joint works on May 1 of a

given year, plus increments thereto occurring through an impounding in said joint works of the storable flow of the Rapid Creek watershed between May 1 and October 1 next succeeding;

(ii) "Municipal water year" shall mean the period between April 30 of one year and May 1 of the succeeding year;

(iii) "District water year" shall mean the period between April 30 and October 1 of any year.

(c) Rights in each season's water supply are hereby allotted the Municipality and the District as follows:

To the Municipality in severally, for domestic, municipal and industrial purposes, a senior priority to and a preferred use of 7,000 acre feet; and to the District in severally, for domestic and irrigation purposes, a junior priority to and secondary use of 8,000 acre feet of water, all subject, however, to the terms, conditions and limitations of this agreement. For the purposes of procuring the proper apportionment to the Municipality and the District of their respective allotments in each season's water supply, the Secretary, as soon as practicable after April 30 of each year, shall give written notice to the Municipality and the District of the volume of water in storage as of May 1 of that year, and of the amount thereof available to each: Provided, That if the volume of water is less than 15,000 acre-feet, the amount announced as

available to the District shall be only the amount by which the volume available exceeds 7,000 acre-feet. As increments to a given season's water supply occur through impounding of the storable flow of the Rapid Creek watershed between May 1 and October 1 of any year, notice thereof shall be given to the Municipality and the Districts, and of the amount available to each, said increments to be available first to the Municipality and secondly to the District to the extent required to bring the portion of the season's water supply of each to the respective amounts of 7,000 acre-feet and 8,000 acre-feet. Releases of a season's water supply will be made to the Municipality and the District only during the respective water year of each, and any part of either the Municipality's or District's supply remaining in storage at midnight of the last day of its water year shall be subject to disposition by the United States as provided in subdivision (f) (iv) hereof. Further, after release to the Municipality of its maximum quantity of a season's water supply during its water year, the Municipality shall have no further right to have water released to it until the beginning of its next water year. Likewise, after release to the District of its maximum quantity of a season's water supply during its water year, the District shall have no further right to have water released to it until the beginning of its next water year. Any water of a sea-

season's water supply in excess of that to which the Municipality and the District are entitled shall be subject to disposition by the United States as provided in subdivision (f) (iv) hereof.

(d) Losses of water in storage resulting without fault on the part of either the Municipality or the District shall be chargeable to each on the basis of the respective shares of each in the amount of water in storage during the period when the loss occurs.

(e) In the normal operations of the storage facilities of the joint works, storage of the supply for the ensuing water years shall be made between October 1 of any year and May 1 of the following year, and all water first impounded in that period shall be held in storage for the next season's water supply notwithstanding the status of the Municipality's apportionment in its then current water year: Provided, That in emergency situation the Secretary may order releases to the Municipality from this supply prior to the beginning of the next water year of the Municipality, in such amounts and subject to such terms and conditions as the Secretary may deem appropriate.

(f) The rights of the Municipality and of the District, respectively and of all persons claiming by, through, or under either of them, respectively, in regard to the use of the water supply from the joint works shall be subject to:

- (i) The terms of this contract; and performance and payment by the Municipality and by the District, respectively, of all of the provisions and obligations to be kept or performed by each of them, respectively, under this contract and said Amendatory Act in regard to the joint works .
- (ii) The right of the United States to release, notwithstanding any other provision of this contract, such water as may be necessary, in the judgment of the Secretary, to satisfy valid senior water rights of persons or entities not parties to this contract.
- (iii) The right of the United States, acting through the Secretary, to use or permit the use of said joint works for any other purpose, including the development of hydroelectric power, the establishment of bird reserves and wildlife refuges, fishing and recreational uses, and other incidental uses, where practicable without substantial interference with the respective rights of the Municipality and District to the use of said water supply.
- (iv) The right of the United States, acting through the Secretary, to dispose of that part of a season's water supply in excess of the rights of the Municipality

and District, respectively, hereunder when there is no reasonable likelihood that such disposal will result in the next seasons water supply being less than 15,000 acre-feet.

- (v) The right of the United States, acting through the Secretary, to restrict the release of water from said reservoir to preserve a minimum storage content of 600 acre-feet.

All revenues received by the United States in the exercise of rights herein reserved shall be the property of the United States.

Operation and Maintenance of the Joint Works

16. (a) The United States will retain possession of, and subject to the payment by the Municipality in advance of the whole annual operation and maintenance charges of the joint works, in the manner, amounts, and at the times herein provided, will operate and maintain, the joint works until other arrangements therefor are deemed necessary by the Secretary and provisions therefor satisfactory to him have been made.

(b) In advance of the time when water from the joint works will be available for release to the Municipality, the Secretary shall give the Municipality written notice fixing therein the date when water will first be so available. This initial notice shall also specify the amount of the estimated operation and maintenance charges of the joint works to the beginning of the period covered by the first operation and maintenance

charges notice hereinafter provided. These charges shall be paid by the Municipality on or before the due date or dates fixed in said initial notice.

On or before October 1 of each year, beginning, if possible, with the first year in which water is delivered to the Municipality from said joint works, the Secretary will forward to the Municipality an estimate, herein called the "Operation and Maintenance Charge Notice," of the cost for the next ensuing calendar year of operating and maintaining said joint works. The Municipality shall pay to the United States the amount specified in any such Operation and Maintenance Charge Notice on or before December 1 preceding the year for which such estimate is made.

Whenever, in the opinion of the Secretary, funds advanced as provided in this article will be inadequate properly to operate and maintain said joint works to the end of the period covered by the notice, he may give a supplemental Operation and Maintenance Charge Notice, stating therein the amount of further advances required. The Municipality shall pay to the United States the amount thereof on or before the time specified in such supplemental Operation and Maintenance Charge Notice.

If funds advanced by the Municipality under this article exceed the actual cost of such operations and maintenance for the calendar year for which advanced, the excess will be credited on the amount otherwise

becoming due under this article on December 1 of the next ensuing year.

In the event the operation and maintenance charges provided for in this article are not paid when due, the United States may, at its election, suspend the operation of said joint works, in whole or in part, and refuse to release water therefrom, or reduce the amount of water to be released therefrom, as determined by the Secretary.

District's Share of Operation and Maintenance
of the Joint Works

17. If the District received water from the joint works, other than under Article 16 hereof, the District shall pay to the Municipality, promptly upon receipt of a bill therefor, its proportionate share of the cost of operating and maintaining said joint works. Said proportionate share is hereby fixed at $1/8$ of $53 \frac{1}{3}$ per cent of the actual operation and maintenance charge as specified in the notice or notices provided for in Article 16 hereof for each 1,000 acre-feet of water or fraction thereof released and delivered to the District from said joint works under Article 16 hereof.

Sale of Water by Municipality. Application of
Revenues Therefrom

18. (a) If the water supply of the Municipality hereunder should prove, in the determination of its board of commissioners, or in the judgment of the Secretary after consultation with said board of commissioners, to be in excess of its immediate requirements, then the Municipality

pality shall make available temporarily such surplus water to the District at such rate and under such terms and conditions as the Secretary may fix, the rate to comprise a construction charge component and an operation and maintenance charge component. The Municipality shall deliver such surplus water to the District at the lower end of the outlet works of the joint works or at such other place or places as the Secretary may designate, and the District agrees to accept delivery of such water at said point. It is further understood that neither this temporary release of water by the Municipality to the District nor the use of such water by the District or its landowners, whether such release and use occasional, repeated, or continuous over a period of years, shall be adverse to or in any manner affect the senior and preferred rights of the Municipality as defined in Article 15 hereof.

(b) The construction charge component of all revenues received by the Municipality under this article shall be used exclusively:

- (i) To apply on the Municipality's obligation under Article 12 of this contract until that obligation is paid in full, the application to be on the installments in the inverse order in which they come due.
- (ii) After the Municipality's obligation under Article 12 is fully paid and if construction of the works described in Article 8 (b) has been commenced, to apply on the District's

obligation under Article 20, on installments thereunder in the regular order in which the same fall due.

(iii) After the obligations of the Municipality under Article 12 and of the District under Article 20, if any, are fully paid, to apply on the actual cost of the joint works over and above the obligation of the Municipality under Article 12 hereof, exclusive of administrative expenses uncurred in the District of Columbia in connection with the investigation, construction, or operation and maintenance of the project until the full amount of said actual cost of said work has been returned to the United States.

(c) The construction charge component of all revenues received by the Municipality under this article shall be placed in the special fund, known as the "United States Contract Fund" and mentioned in Article 14 hereof. No part thereof shall be used by the Municipality for any purpose other than in accordance with subdivision (b) of this article. The amount of said revenues in said fund on December 31 of each year shall be remitted to the United States on or before January 15 of the succeeding year.

(d) When the District's obligation under Article 20 hereof and the actual cost of the joint works as specified in subdivision (b) (iii)

are discharged in full, revenues realized by the Municipality from the sale of water under this article shall be the property of the Municipality.

Substitute Water; Abandonment of Return Flow

19. (a) If the Municipality, after the date announced by the Secretary as the date that water will be ready for release to it from the joint works, diverts or takes any water from Rapid Creek or its tributaries, including the natural springs, to the use of which there are prior rights for agricultural purposes, the Municipality shall during such diversion or taking substitute and deliver, without charge, for the benefit of the owners of such rights to the point or points of such diversion or taking, as nearly as practicable, an equal quantity of water from the supply available to it under this contract.

(b) The Municipality hereby abandons all claims, present and prospective, of whatsoever nature, to any and all water, of every kind and description, after its municipal use thereof and when the same is returning, whether visibly or invisibly, to Rapid Creek or its tributaries, including natural springs.

Terms of Repayment by the District of the
Construction Cost Allocated to Irrigation

20. (a) For a water supply to be made available by dams and reservoirs of the irrigation works, to be hereafter located and constructed as the Secretary in his sole judgment may determine as provided in Article 8 hereof, the District shall pay to the United States

\$500,000 or such lesser sum as represents the total expenditure by the United States on irrigation works as finally determined by the Secretary.

(b) For one or more drains or drainage systems, to comprise a part of the irrigation works, to be hereafter located and constructed as the Secretary in his sole judgment may determine as provided in Article 8 hereof, the District shall pay to the United States \$100,000 of such lesser sum as represents the total expenditure by the United States in drainage works as finally determined by the Secretary.

(c) On or before October 1 of the last year of the development period provided in Article 21 hereof, the Secretary shall give to the District a construction cost notice, which notice shall include a statement of the construction cost to be repaid by the District under this contract, as conclusively determined by the Secretary, of the whole or the part of the irrigation works then available for service to the District; and if said notice covers only a part of said works, one or more supplemental notices shall be given in like way and manner with respect to other parts of said irrigation works as they become available for service to the District. If a final determination of said cost of that part of the irrigation works covered by any notice cannot be made at the date of such notice, and estimate of such cost may be made by the Secretary, said estimate to govern the amount of the obligation of the District in respect to the works covered by the notice until such time as the actual reimbursable cost thereof

can be determined and a statement submitted to the District. The construction charge obligation fixed as herein provided shall be paid in forty (40) successive, equal, annual installments, to be due and payable on May 1 of each year commencing on May 1 next succeeding the date of the notice: Provided, That in respect to the obligation fixed in any supplemental notice, the Secretary may at his option provide for a lesser number of installments so as to make the last installment thereunder fall due and payable with the last installment of the obligation fixed in the initial notice.

Any difference between any estimated construction obligation and any construction obligation as finally determined shall be spread equally, as a charge or credit, as the case may be, over the remaining unaccrued installments of said obligation.

(d) If, after any irrigation work is undertaken, as provided in subdivision (b) of Article 8 hereof, said work is abandoned prior to the completion thereof by reason of the failure of the District to perform those things on its part to be performed under the terms of this agreement with respect thereto, then the district shall pay to the United States all monies expended from appropriations made directly pursuant to the authority contained in Section 12 (1) of the Amendatory Act plus such amount from other Federal sources as the President may have determined to be reimbursable in the partial construction of such works in forty (40) successive, equal, annual installments, the first

of which shall become due and payable on December 31 of the year following the year in which the construction of such work is abandoned.

Development Period

21. There is hereby established a development period of five calendar years commencing with the calendar year next succeeding that in which the Secretary gives to the District the development period notice as provided herein. When in the determination of the Secretary water will be available in the next ensuing calendar year for release to the District from the first reservoir of the irrigation works, the Secretary shall give to the District notice thereof, herein called "the development period notice." This notice shall include a statement of the amount of the development charges for the first month of such development period. During the development period the United States will release water from such reservoirs of the irrigation works as is deemed necessary for delivery by the District to those entitled thereto upon payment annually in advance by the District to the United States of such per acre-foot or other charge or charges, herein called "the development period charges," as may be fixed by the Secretary. Such charges fixed for each year of the development period shall be sufficient to return over the whole development period the cost of operating and maintaining the irrigation works during the period. Notice of the amount of the development charges so fixed for the second, third, fourth, and fifth years of the development period shall be given to the District on or before October 1 of the Year preceding that on

account of which such charges are fixed. The District agrees to pay in advance on or before December 1 of the year in which each notice of such charges is given said development period charges in accordance with the statement of the amount thereof as in this article provided. In case the amount collected on account of development period charges exceeds the cost of operating and maintaining the irrigation works during the development period, as thereafter determined by the Secretary, such excess will be credited to the District's obligation provided in Article 20 hereof in the manner determined by the Secretary.

Operation and Maintenance of the Irrigation Works

22. The United States will retain possession of, and subject to payment by the District in advance of operation and maintenance charges in the manner, amounts and at the times here provided, will operate and maintain the irrigation works until other arrangements therefor are deemed necessary by the Secretary and provisions therefor satisfactory, to him have been made.

On or before October 1 of the last year of the development period provided for in Article 21 hereof and on or before each October 1 thereafter, the Secretary will make an estimate and give to the District a notice of such estimate, herein called the "operation and maintenance" charge notice, of the cost for the next ensuing calendar year of operating and maintaining all or any part of the irrigation works, to be operated and maintained by the United States. The District shall

maintenance charge notice on or before December 1 preceding the year for which such estimate is made. Whenever, in the opinion of the Secretary, funds so advanced will be inadequate properly so to operate and maintain the works mentioned in this article to the end of any calendar year, he may give a supplemental operation and maintenance charge notice, stating therein the amount of additional advances required; and the District shall pay to the United States the amount thereof on or before the date specified in such supplemental operation and maintenance charge notice. If funds advanced by the District under this article exceed the actual cost of such operation and maintenance for the calendar year for which advanced, the excess will be credited on the amount otherwise becoming due under this article on December 1 of the next ensuing year.

In the event the operation and maintenance charges provided for in this article, and the development period charges provided for in Article 21 hereof, are not paid when due, the United States, may at its election, suspend operation of the irrigation works, in whole or in part and refuse to release water therefrom, or reduce the amount of water to be released therefrom, as determined by the Secretary.

Right of District to Use of Water Supply of Irrigation Works

23. (a) All water that becomes available through the construction and operation of the irrigation works shall be delivered to the District for irrigation and domestic purposes at the lower end of the outlet canal

of the storage facilities of the irrigation works or at such place or places as the Secretary may designate.

(b) The rights of the District, and of all persons claiming by, through, or under it, to the use of said water supply in subdivision (a) of this article mentioned shall be subject to:

- (i) The terms of this contract; and performance and payment by the District of all provisions and obligations to be kept or performed by it under this contract and said Amendatory Act in regard to the joint works.
- (ii) The right of the United States, acting through the Secretary, to use or permit the use of said irrigation works for any other purpose, including the development of hydroelectric power, the establishment of bird reserves and wildlife refuges, fishing and recreational uses, and other incidental uses, where practicable without substantial interference with the right of the District to use said water supply for irrigation and domestic purposes.
- (iii) The right of the United States, acting through the Secretary, to dispose of that part of said water supply not required for use within the District for irrigation or domestic purposes

upon such terms and conditions as the Secretary may fix, consistent with his authority under law

- (iv) The right of the United States, acting through the Secretary, to restrict the release of water from any reservoir of the irrigation works to the extent necessary to preserve a reasonable minimum storage content.

(c) All revenues received from the exercise of rights reserved under paragraph (ii) and (iii) of subdivision (b) of this article shall be the property of the United States.

Computation of Costs

24. The costs which make up the various obligations of the Municipality and the District to the United States under this contract shall embrace all expenditures of whatsoever kind, in relation to the project works for which the charge is made, including the cost of labor, property, material and equipment, engineering and legal work, superintendence, administration, overhead, general expenses, special services and damage claims of all kinds; inspection, repair and protection of the project works and water supply, inspection of the books, records and papers of the Municipality and District so far as the same may be determined by the Secretary to be necessary to ascertain whether the terms of this contract are being faithfully executed by the Municipality and District; and surveys

and investigations, including soil investigations in connection with the irrigation of project lands, if any: Provided, however, that administrative expenses incurred in the District of Columbia in connection with the investigation, construction, or operation and maintenance of the project works or any thereof shall not be included in the computation of costs herein provided for, nor shall they be charged to the Municipality or District or the water users in any way. The determination of what cost are properly chargeable hereunder, the amount there of, and whether properly chargeable as part of the cost of construction or the cost of operation and maintenance shall be conclusively made by the Secretary.

District to Use All Powers to Collect Charges

25. The District shall cause to be fixed or established all necessary charges, rates and tolls, including sufficient amounts to make up for the defaults of those who do not pay the same, and shall use all of the powers and resources of the District to collect and pay to the United States in full at or before maturity all charges or sums required by this contract to be paid by the District. The debts due the United States hereunder are hereby declared to be prior to all other obligations of the District; and from any monies coming into the possession of the District and applicable to the payment of its obligations, the United States shall be paid prior to all other claimants whatsoever.

Refusal of Water of Account of Delinquency

26. (a) The Secretary may, in his discretion, refuse to release water from the joint works for delivery to the Municipality, while the Municipality is in arrears in the advance payment of operation and maintenance charges thereof or in arrears for more than twelve months in the payment of any installment of the obligation specified in Article 12 hereof.

(b) The Secretary may, in his discretion, refuse to release for delivery to the District:

- (i) Any water from the joint works made available to the District under Article 15 hereof while the District is in arrears in the advance payment of operation and maintenance charges as provided in Article 17 hereof or in arrears for more than twelve months in the payments to the United States under Article 13 hereof.
- (ii) Any water from the joint works made available to the District under Article 18 hereof while the District is in arrears in the payment of any operation and maintenance charge component therein provided or in arrears for more than twelve months in the payment of any construction charge component therein provided.

(c) The Secretary may, in his discretion, refuse to release water from the irrigation works for delivery by the District to or for any land or party receiving its right to such water from or through the District while either the District, said land, or said party is in arrears in the advance payment of operation and maintenance charges or development period charges thereof or in arrears for more than twelve months in the payment of any installment of the obligation specified in Article 20 hereof.

(d) The District shall refuse water service to or for any land or party while either said land or party is: (a) in arrears in the payment to the District of any tolls or other charges levied or established by the District to meet its payments under Article 13, 21, and 22 hereof; or (b) in arrears for more than twelve months in the payment to the District of any tolls or other charges levied or established by the District to meet its payments under Article 20 hereof.

The provisions of this article are not exclusive and shall not in any manner hinder the United States from exercising any other remedy to enforce collection of any amount due under this contract.

Acquisition of Lands and Easements

27. The Municipality as to the joint works, and the District as to the irrigation works, shall, each respectively at its own expense, negotiate for the purchase of all lands and easements when, and if, advised

by the Secretary that the same are needed for the construction or operation and maintenance of said works, respectively, using for that purpose such forms of contracts, deeds and other necessary papers as may be designated by or satisfactory to the Secretary. Upon procuring the execution of the Necessary contracts, deeds and any other papers the Municipality of District, as the case may be, shall transmit the same to the United States and payment of the purchase price will be made by the United States in due course if, in the opinion of the Secretary, the purchase price is reasonable and said instruments are satisfactory in form and contents and show satisfactory title in the United States.

In case any such needed lands or easements cannot be purchased by agreement, the Municipality or the District, as the case may be, shall initiate and prosecute to completion the necessary condemnation proceedings for their acquisition, the entire expense of which, including the payment of the award or purchase price, shall be borne by the Municipality or District from its own funds. Upon the acquisition by condemnation of such lands or easements, the Municipality or District, as the case may be, shall convey the same to the United States upon terms and conditions and at prices satisfactory to the Secretary, said prices not to exceed the actual cost to the Municipality or District of such acquisition.

Disposal of Water by the District

20. (a) The District shall allot, sell or contract for the disposal within the District of water from the supply made available to it by the Municipality under Article 18 hereof and the supply made available to it by the United States under Article 15 and 23 hereof: Provided, That no water shall be sold or contracted for sale for any use except irrigation or domestic use without the consent of the Secretary.

(b) Until the obligations to the United States under Articles 12 and 20 of this contract have been paid in full to the United States, all allotments, sales or contracts for the disposal of all said water be at rates and on terms and conditions approved in advance by the Secretary. Such terms and conditions, in addition to and including those required for compliance with all applicable State and Federal laws, shall include such provisions as to the use of water to protect the lands against deterioration through misuse of water and for advance payment of the rates or charges, security, and other terms, as may be satisfactory to the Secretary.

Release of Stored Water by the United States

20. (a) Stored water made available by and through the project works will be released to the Municipality or the District, as the case may be, by the United States, acting through the Engineer of the Bureau of Reclamation in charge of the project works and delivered at the delivery points described in Articles 15 and 23 at times and in amounts to the extent

of the capacity of any outlet canal or canals or other works in accordance with the requests from time to time made at least 24 hours in advance of the time such delivery is needed, directed to said engineer by the Municipality or District acting through such person as may be designated in writing for that purpose.

In the case of the joint works if both the Municipality and the District are entitled to the release of stored water at approximately the same time, the release of each party shall be made, within the capacity of the outlet canal, or other works in such rotation as to interrupt to the least possible extent the water needs and uses of each party: Provided, That a steady release to the Municipality, for its continuous necessary municipal use, within its maximum quantity of 7,000 acre-feet, shall have priority in case of unavoidable conflict.

(b) The Municipality and the District agree, each respectively, to accept release of stored water at the described delivery points in full performance by the United States of its duty to release stored water hereunder. The United States shall not be responsible for the control and handling of water which may be so released as aforesaid beyond said delivery points, and the Municipality and District as to the joint works and the District as to the irrigation works shall hold the United States, its officers and employers and employees harmless on account of damage or claims of damage of any nature whatsoever including but without limitation by reason of this enumeration, property damage or damage

on account of personal injury or death, arising out of or connected with the control, handling, use, disposal or distribution of water beyond such delivery points.

(c) In case of dispute as to the character, extent, priority or validity of the right of the United States to the use of water of Rapid Creek and its tributaries as the principal project water supply, the Municipality and the District as regards the water supply from the joint works, and the District as regards the water supply from the irrigation works, shall promptly bring and diligently prosecute judicial proceedings for the determination of such dispute and shall take all other measures for the defense and protection of said right, either independently or in cooperation with the United States, when the Secretary, in his discretion, determines that such proceedings or other measures are desirable. Nothing in this paragraph, however, shall be construed as precluding the United States from taking such action as the Secretary deems necessary to protect the project water supply, or any part thereof, independently or in cooperation with the Municipality, District, or either of them, or against the Municipality, District, or either of them, in the event of a dispute between the United States and the Municipality, District, or either of them. The cost of any such action taken at the request of the Secretary shall be included as a part of the operation and maintenance costs of the work involved. Pending or in the absence of a judicial determination as to

the character, extent, priority or validity of the rights of the United States, the Municipality and District shall be conclusively bound by the Secretary's determination of the amount of water to be released from storage from any reservoir to satisfy any prior or superior water rights or claims thereof.

United States Not Liable for Water Shortages

30. On account of drought, inaccuracy in distribution, hostile diversion, prior or superior claims, or other causes, it is expected that there will occur at times a shortage in the quantity of water which will be made available through and by means of said joint works or the irrigation works or both and of each reservoir or part thereof constructed hereunder, but in no event whatsoever the cause shall any liability accrue against the United States or any of its officers, agents or employees for any damage, direct or indirect, arising therefrom. The payments to the United States provided for herein shall not be reduced because of any such shortage or damage.

Waste Water, Seepage Water and Return Flow

31. (a) The United States does not abandon or relinquish any of the waste or seepage water or return flow water arising through or by means of the project works or in any other manner in connection with the operation of the project but the same is reserved and intended to be retained for the use and benefit of the United States as a source of supply of said project.

(b) If suitable drainage or return flow water from any part of the territory of the project shall at any time be or become available at points where the same can be used on project lands, the United States and the District or either of them may substitute in lieu of stored water from the Project works an equal amount of such drainage or return flow water to the extent that the same is available for delivery by the District into the ditches supplying said lands at points where the same can be used thereon and at times when water is needed. The landowners of the District who accept the benefits of this contract shall be deemed thereby to have consented to such substitution.

Drainage

32. No drainage works shall be constructed until one or more reservoirs comprising part of the irrigation works have been constructed. It is further understood that a complete drainage system adequate to meet all future requirements of the project cannot be constructed nor is the same contemplated with the funds proposed for expenditure therefor, but it is agreed that the maximum number and extent of such drains to be constructed by the United States is limited to a maximum expenditure of \$100,000 of monies from appropriations under Section 12 (1) of the Amendatory Act and from other Federal sources as the President may determine to be reimbursable.

It is further understood that the United States does not represent or warrant that any or all of the drains which may be constructed will

be sufficient for the purpose intended; and, irrespective of the construction or lack of construction of any drains by the United States, the District hereby agrees to and does hold the United States, its officers, agents and employees harmless from all claim arising from seepage or lack of drainage in connection with the irrigation of lands from the project water supply or resulting from the use of stored water of the project or otherwise.

Economical Use of Water

33. To the end that the project may be effective in reducing water shortages in dry cycles, the Municipality shall take every reasonable measure to effect an economical and efficient use of water. To a like end, the District shall take every reasonable measure to effect an economical and efficient use of water by every water user in the District. Whenever wasteful, inefficient or uneconomical use of water is being made by a water user within the District, the District, with the advice and cooperation of officers of the United States, will take such action as may be necessary and reasonably practicable to correct such wasteful, inefficient and uneconomical use of water.

Limit of Irrigable Lands in Single Ownership

34. Pursuant to the provisions of the Amendatory Act, the Secretary has established the size of a farm unit of irrigable lands which may be entitled to receive water from the project works at not to exceed 160 irrigable acres. No water shall be delivered through or by means of the project works, including the joint works, to or for more than a single

farm unit of 160 acres of irrigable land owned by a single landowner; Provided, That the provisions of this article and of Article 33 hereof shall not apply with respect to the United States or any agency instrumentality thereof, corporate or otherwise,

Disposal of Land at Not to Exceed Appraised Values

35. No water shall be delivered through and by means of the project works, including the joint works, to or for any land transferred or disposed of on or subsequent to October 25, 1949, and within three years from the date water becomes available therefor from the project works, including the joint works, unless and until it has been shown to the satisfaction of the Secretary or his duly authorized representative that the land has been transferred or disposed of at a price not exceeding the appraised value thereof and the improvements thereon at the time of the transfer or disposal, or contract for such transfer or disposal, whichever is earlier. The Secretary will make such appraisals, excluding any increment attributable to the construction of the project works, including the joint works, but appraisals may be revised by the Secretary from time to time, at the request of any owner, to reflect changes in value attributable to other reasons. Copies of all appraisals, and revisions, shall be filed in the principal office of the District.

Upon proof of fraudulent representation as to the true consideration received in any such transfer or disposal, the Secretary may cancel the right of the land involved to receive water from, through or by means of

the project works or from the project water supply: Provided, That nothing herein shall be construed to create an authority to interfere with the delivery of water under prior rights.

The District shall take all measures that may be necessary to enforce observance of the provisions of this article and of Article 34 hereof, and shall on or before December 31 of each calendar year, commencing December 31 of the year in which this contract is executed and until and including the third year from the date water first becomes available from the project works, including the joint works, make a complete report setting forth its investigation and information of all transfers or disposals of lands in the District and of the consideration therefor.

Penalty for Delinquency

36. In addition to other right and remedies under the law or this contract, delinquencies in any payments due to the United States shall be penalized by a penalty of one half of one percentum per month.

Crop Reports, Accounting, and Other Measures

37. (a) The District shall take such measures as it may be advised by the Secretary are deemed proper to secure the adoption of proper accounting to protect the condition of the irrigation works, and of the joint works, to the extent the District receives water from the joint works, and to provide for the proper use of said irrigation works and of said joint works to the extent aforesaid, and to protect project

lands to be irrigated against deterioration due to improper use of water.

The District shall install and maintain in a manner satisfactory to the Secretary a modern set of books of account showing all financial transactions of the District and furnish such financial reports or statements as may be required from time to time by the Secretary.

The District shall keep a reasonably accurate record of all crops raised and agricultural or livestock products produced under the irrigation system of the District and furnish the Secretary on or before December 31 of each year a crop report including the aforesaid data in form prescribed by the Secretary.

(b) Upon request of the Secretary, the Municipality shall furnish once annually a written financial statement of all revenues received from water released for delivery to it hereunder and of its disposition of said revenues; and upon request, the Municipality shall permit the Secretary to audit or examine all books, records and supporting data in relation thereto.

Title to Remain in the United States

38. The United States shall retain title to the project works until Congress otherwise provides.

Changes in Organization of District

39. While this contract is in effect no change will be made in the organization or boundaries of the District either by inclusion or exclusion

of lands, by partial or total consolidation or merger with another district, by proceedings to dissolve, or otherwise except upon the Secretary's written assent thereto.

Obligations of the District and of the Municipality are Se-
verable and Independent

40. No provision of this agreement is intended to mean, nor shall it be construed to mean, that the Municipality assumes any liability directly or indirectly to the United States or to the District as principal, guarantor, or surety, of the several obligations of the District to the United States under this contract.

Neither is any provision of this contract intended to mean, nor shall it be construed to mean, that the District assumes any liability directly or indirectly to the United States or to the Municipality as principal, guarantor, or surety, of the several obligations of the Municipality to the United States under this contract.

It is further understood and agreed that the several obligations of the Municipality are independent covenants between the United States and the Municipality alone; and likewise that the several obligations of the District are independent covenants between the United States and the District alone: Provided, That, at the option of the Secretary, the right of termination as to both the Municipality and the District as provided in Article 45 hereof may be exercised if either or both the Municipality or the District fail to procure satisfactory judgments and decrees as therein required.

Secretary Arbiter of Disputes Involving Questions of Fact

41. In the event of disputes between the parties hereto arising out of this contract involving questions of fact, and in so far as the provisions hereof require a determination of fact to be made, the Secretary is hereby designated as the arbiter of such questions and as the one required to make such determination of facts, and his decision thereon shall be conclusive and binding upon the parties hereto.

Rules and Regulations

42. The Secretary reserves the right, so far as the purport thereof may be consistent with the provisions of this contract, to make reasonable rules and regulations, and to add to or modify them, as he may deem proper and necessary, to carry out the true intent and meaning of the law and of this contract.

Representative of the Secretary

43. Where this contract uses the term "Secretary" this shall be deemed to include in all cases the Under or any Assistant Secretary or other official of the Department of the Interior of Equal authority.

Further, where this contract provides for action by the Secretary, such action may be undertaken, except as to that provided for in Articles 41 and 42 hereof, for or on behalf of the Secretary by his representative duly authorized therefore in writing.

Assignment of Contract

44. No assignment or transfer of this contract or any part thereof or interest therein, whether voluntary or involuntary, shall be valid

until approved in writing by the Secretary herein. In the event, however, of a valid transfer or assignment, the successor or assignee shall be subject to all the provision, conditions, and terms of this contract to the same extent as the original contractor hereunder.

Assurances Relating to Validity of Contract

45. The District and the Municipality shall each separately commence and prosecute to final judgment proceedings in a court of competent jurisdiction under Chapter 37, 01, South Dakota Code, determining and declaring the validity and legality of this contract and each provision thereof as valid and binding general obligations of said District and said Municipality, respectively. The District and Municipality shall furnish the United States for its files certified copies of such proceedings; and the District shall also furnish the United States for its files certified copies of all proceedings relating to the organization of the District. If in the opinion of the Secretary satisfactory judgments and decrees are not promptly secured by the District or Municipality, or either of them as herein provided, the Secretary may terminate this contract: Provided, That such termination shall not relieve either the Municipality or the District of liability under the provisions of Article 12 and 20 hereof which accrues as of the date of such termination, nor of any other obligations to the United States hereunder which has accrued as of the date of such termination.

Officials Not to Benefit

40. No Member of or Delegate to Congress or Resident Commissioner shall be entitled to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

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

THE UNITED STATES OF AMERICA

By _____
Secretary of the Interior

(SEAL)

RAPID CITY, SOUTH DAKOTA

Auditor

By _____
Mayor

ATTEST (SEAL)

RAPID VALLEY WATER CONSERVANCY
DISTRICT

Secretary

By _____
President

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Billings, Montana

November 29, 1939.

Hon. Dean W. Loucks,
State Engineer,
Pierre, South Dakota.

RECEIVED
DEC 1 1939

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Dear Mr. Loucks:

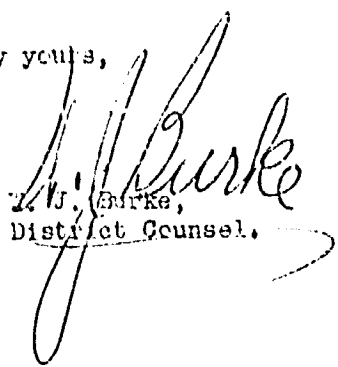
Inclosed is a Notice of Intention to the State Engineer of the State of South Dakota for the diversion, storage, and appropriation of water for beneficial use from Rapid Creek located in Pennington County, South Dakota. This notice is in connection with the construction of the Pactola Reservoir which is proposed for construction by the United States Bureau of Reclamation.

As indicated in the answer to question No. 12, plans of the proposed reservoir, when they are prepared, will be filed with you. The notice is filed pursuant to Section 61.0137, Revised Code of South Dakota 1939.

Please acknowledge receipt of the notice, and also furnish the date when the notice was accepted for filing in your office and the recordation data of your office.

Very truly yours,

Inc.


T. W. Burke,
District Counsel.

NOTICE OF INTENTION TO THE
STATE ENGINEER OF THE STATE OF SOUTH DAKOTA

RECEIVED
1939
OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Rapid Valley Project, South Dakota

Notice of Intention to divert, store and appropriate water for beneficial uses from certain stream within South Dakota by the United States of America.

The United States of America, through R. F. Walter, Chief Engineer of the Bureau of Reclamation, thereunto duly authorized by the Secretary of the Interior, hereby notifies the State Engineer of South Dakota of its intentions to appropriate, by construction, diversion, storage and beneficial use, the unappropriated public waters within South Dakota, under Section 61.0137 of the 1939 Revised Code of South Dakota. Application is hereby made for the withdrawal of certain unappropriated public waters within the State of South Dakota in the amount sufficient to maintain storage in Pactola Reservoir, and the following information is furnished:

1. Representative of the United States of America authorized to act in the premises.
Ans. Chief Engineer, Bureau of Reclamation, Denver, Colorado.
2. Name of intending appropriator.
Ans. United States of America.
3. Name and address of agency representing intending appropriator.
Ans. United States Department of the Interior, Bureau of Reclamation, Washington, D. C.
4. Name of reservoir.
Ans. Pactola.
5. County in which water is to be diverted, stored and appropriated.
Ans. Pennington.
6. Name of streams from which water is to be diverted, stored and appropriated.
Ans. Rapid Creek.
7. The outlet of the reservoir is located in Section 2, Township 1 N., Range 5 E., Black Hills Meridian.
8. Uses to which water directly diverted or diverted and stored is to be put.

- Ans. Irrigation and domestic. Domestic shall include the use of water for household, stock, municipal, mining, milling, industrial, generation of electrical power, and other like purposes.
9. The available capacity of reservoir in acre-feet.
Ans. 40,000 acre-feet.
10. Acre-feet of water to be appropriated annually for diversion and storage in reservoir.
Ans. 40,000 acre-feet.
11. Location of lands to be irrigated.
Ans. Pennington County, South Dakota.
12. Class of plans accompanying "Notice of Attention".
Ans. Plans of the proposed reservoir, when they are prepared, will be filed with the State Engineer of South Dakota.

Dated at Denver, Colorado, this 22nd day of November, 1939.

THE UNITED STATES OF AMERICA.

By R. A. Walter
Chief Engineer,
Bureau of Reclamation.

RECEIVED
DEC 1 1939

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

December 5, 1939

Re: Rapid Valley Project
Water Division No. 2
Rapid Creek Water District

W. J. Burke, District Counsel
U. S. Department of Interior
Billings, Montana

Dear Mr. Burke:

This will acknowledge receipt of Notice of Intention to divert, store and appropriate water for beneficial use from Rapid Creek located in Pennington County, South Dakota, and in connection with the Pactola Reservoir which is proposed for construction by the U. S. Bureau of Reclamation.

The Notice was accepted and filed on December 1, 1939 under the designation of U. S. Withdrawal No. 509.

Very truly yours,

DEAN W. LOUCKS,
State Engineer.

DWL:dn
enc.

July 10, 1941

Re: Rapid Valley Project
Withdrawal No. U.S. 509

S.O. Harper, Chief Engineer
United States Department of the Interior
Bureau of Reclamation
Denver, Colorado

Dear Mr. Harper:

This will acknowledge receipt of your letter of July 3rd, enclosing, "Amended and Supplemental Notice of Intention to the State Engineer of the State of South Dakota."

The amendatory notice has been filed in this office as an amendment to Withdrawal No. 509 which was filed December 1st, 1939, pursuant to Section 61.0137 of the South Dakota Code of 1939.

You also state that pursuant to Section 61.0137, plans of the proposed work will be filed in this office as soon as same have been prepared.

Very truly yours,

Dean W. Loucks
State Engineer

DWL/mf

ADDRESS ALL COMMUNICATIONS TO
THE CHIEF ENGINEER

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
CUSTOMHOUSE
DENVER, COLORADO

OFFICE OF THE CHIEF ENGINEER

RECEIVED
JAN 10 1941
OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Mr. Dean W. Loucks,
State Engineer,
Pierre, South Dakota.

Dear Mr. Loucks:

Enclosed is an "Amended and Supplemental Notice of Intention to the State Engineer of the State of South Dakota" for the withdrawal from other appropriation of sufficient of the unappropriated waters of Rapid Creek and its tributaries for the reclamation of 18,000 acres of land under the Rapid Valley Project.

On December 1, 1939, there was filed on behalf of the United States, pursuant to Section 61.0137, South Dakota Code, 1939, and accepted by your office, "Withdrawal No. U. S. 509", relating to the unappropriated waters of Rapid Creek, but since that date it has developed that the construction of the dam on Rapid Creek, mentioned in that notice, will be indefinitely postponed.

The first development contemplated by the notice filed December 1, 1939, as amended by the enclosed notice, will consist of certain storage works on Castle Creek as only one unit in the ultimate development by storage and direct diversion of the waters of Rapid Creek and its tributaries.

The plans of the proposed work, as soon as the same shall have been prepared, will be filed in your office for your information, as contemplated by the laws of the State of South Dakota.

It would be appreciated if you will acknowledge receipt of the enclosed mandatory notice and, if you find such action appropriate, advise us that the same has been filed as an amendment of Withdrawal No. U. S. 509, filed December 1, 1939.

Very truly yours,

S. O. Harper
S. O. Harper,
Chief Engineer.

Encls.