

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

In the Matter of Application)
Number 58590 Filed by the Southern)
Nevada Water Authority on)
March 9, 1993, to Appropriate)
Waters of the Virgin River)
_____)

Protest of the
Central Arizona Water
Conservation District

The Central Arizona Water Conservation District ("CAWCD"), whose address is 23636 North 7th Street, Phoenix, Arizona 85024, hereby protests the granting of application number 58590, filed on March 9, 1993, by the Southern Nevada Water Authority to appropriate the waters of the Virgin River and its tributaries, situated in Clark County, State of Nevada.

CAWCD is a political subdivision of the State of Arizona, organized and existing under A.R.S. §§ 48-3701, et seq. CAWCD has been organized for the purposes of, inter alia, contracting with the Secretary of the Interior for the repayment of the costs and for the delivery of the water supply of the Central Arizona Project ("CAP") in accordance with the provisions of the Colorado River Basin Project Act, 43 U.S.C. §§ 1501, et seq.

The Secretary of the Interior, pursuant to his authority under Section 301(b)(1) of the Basin Project Act, 43 U.S.C. § 1524(b)(1), and the CAWCD pursuant to the above referenced authorities, have entered into a contract for the repayment of CAP costs and delivery

TEX

of CAP water supplies. Repayment Contract (Contract No. 14-06-W-245), December 1, 1988 is attached hereto as Exhibit A. Under Article 8.1 of the Repayment Contract, the United States has agreed to delivery Project water to CAWCD, and during such periods as the United States operates and maintains the Project water supply system, the United States has also agreed to transport and deliver Project water to CAP subcontractors. After the transfer of operation and maintenance responsibility to CAWCD, deliveries of Project water will be made to CAWCD as the operating agency, which will in turn make deliveries of Project water to CAP subcontractors. "Project water" is defined to include Colorado River mainstream water and all other water conserved and developed by CAP dams and reservoirs. Repayment Contract, Article 5.27. Deliveries of Colorado River water by the United States pursuant to the Repayment Contract are charged to the State of Arizona's apportionment of Colorado River water under the United States Supreme Court's decree in Arizona v. California, 376 U.S. 340 (1964), and discharge to that extent the obligation of the United States to deliver 2.8 million acre-feet of Colorado River water annually to the State of Arizona under the contract between the United States and the State of Arizona dated February 9, 1944. Repayment Contract, Article 8.3(b).

The Central Arizona Project is the major junior right holder on the Lower Colorado River. The CAP and its water users will absorb most of the mainstream shortages occurring in the future, and therefore, would be the first users harmed and users most harmed by any significant diminution of the water supplies of the Colorado River.

CAWCD protests the granting of Southern Nevada Water Authority's ("SNWA") application to appropriate no. 58590 (the "Application") because the proposed point of diversion listed in the Application is the mainstream of the Colorado River, specifically, Lake Mead at the existing Saddle Island pumping station. The Nevada State Engineer ("State Engineer") must deny the Application for the following reasons:

1. THE STATE ENGINEER HAS NO JURISDICTION TO, AND INDEED IS ENJOINED FROM, AUTHORIZING ANY DIVERSIONS FROM THE MAINSTREAM OF THE COLORADO RIVER.

The proposed point of diversion under the Application is Lake Mead at the existing Saddle Island diversion facilities. The Application proposes to use the mainstream of the Colorado River (specifically Lake Mead) as a conduit to transport tributary water from the Virgin River to the diversion facilities at Saddle Island.

The Application is predicated on the faulty premise that Virgin River water can retain its identity as tributary water even after it flows into the mainstream of the Colorado River. However, it is well established under the Law of the River that once tributary water commingles with mainstream water of the Colorado River, the tributary water becomes mainstream water.

The State Engineer has no jurisdiction over the mainstream of the Colorado River, such jurisdiction rests exclusively with the United States. See Arizona v. California, 373 U.S. 546 (1963). Indeed, the Decree entered by the United States Supreme Court in Arizona v. California, 376 U.S. 340 (1964) (the "Decree"), permanently enjoins Nevada and the other Lower Basin States from: (1) purporting to authorize any diversions from the mainstream of

the Colorado River; and (2) purporting to authorize the consumptive use of water from the mainstream in excess of the quantities permitted under the Decree. Articles III.(C) and (D) of the Decree provide in pertinent part:

"III. The States of Arizona, California and Nevada, . . . their officers, attorneys, agents and employees, be and they are hereby severally enjoined:

* * *

(C) From diverting or purporting to authorize the diversion of water from the mainstream¹ the diversion of which has not been authorized by the United States for use in the respective state; . . .

(D) From consuming or purporting to authorize the consumptive use of water from the mainstream in excess of the quantities permitted under Article II of this Decree. [300,000 acre-feet per year for use in Nevada, during a normal water supply year.]" 376 U.S. 340 (1964).

Granting the Application would violate both of the above-cited injunctions imposed by the Decree. The Application asks the State Engineer to authorize the diversion of water from Lake Mead. However, under the Decree, the State Engineer is prohibited from authorizing any diversion from the mainstream absent prior approval from the United States. The United States has not authorized these proposed diversions from Lake Mead. In fact, upon information and belief, the United States is opposed to and will protest these proposed diversions. Accordingly, the State Engineer cannot grant the Application without violating Article III.(C) of the Decree.

Furthermore, the State Engineer cannot grant the Application without violating Article III.(D) of the Decree which prohibits

¹ The term "mainstream" is defined in Article I.(B) of the Decree as ". . . [T]he mainstream of the Colorado River downstream from Lee's Ferry within the United States, including the reservoirs thereon."

Nevada, its officers, agents and employees, from purporting to authorize the consumptive use of water from the mainstream in excess of Nevada's 300,000 acre-feet entitlement to Colorado River water. Because the point of diversion under the Application is the mainstream of the Colorado, the source of the proposed appropriation is the Colorado River not the Virgin River. The Application seeks authorization to appropriate mainstream water in an amount over and above Nevada's 300,000 acre-feet entitlement. Accordingly, the State Engineer is enjoined by Article III.(D) of the Decree from granting the Application.

2. EVEN IF THE STATE ENGINEER WERE TO GRANT THE APPLICATION, SUCH ACTION WOULD BE WITHOUT FORCE AND EFFECT.

As explained above, despite the wording of the Application, the Application, in reality, seeks to appropriate Colorado River water, not tributary water. Article II.(B)(5) of the Decree provides that no one may use Colorado River unless they have a valid contract for such use with the Secretary of the Interior. SNWA does not have a contract with the Secretary of the Interior to use the water sought in the Application. Without such a contract, a state issued permit to appropriate is useless. Furthermore, Article II.(B)(4) of the Decree provides that "[a]ny mainstream water consumptively used within a state shall be charged to its apportionment, regardless of the purpose for which it was released." Therefore, any water diverted pursuant to the Application and permit would be charged to Nevada's Colorado River entitlement. Granting the application would and could not increase the water supplies available to Nevada from the Colorado River.

For all the reasons stated above, CAWCD requests that the Application be denied.

Respectfully submitted this 20th day of May, 1993.

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

By Suzanne Ticknor
Douglas K. Miller
General Counsel
Suzanne K. Ticknor
Staff Attorney
23636 North 7th Street
Phoenix, Arizona 85024

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Suzanne K. Ticknor, being first duly sworn, deposes and says, that she has read the foregoing protest and knows the contents thereof and that the same is true of her own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters she believes them to be true.

Suzanne Ticknor
Suzanne K. Ticknor

Subscribed and sworn to before me this 20th day of May, 1993.

Donna J. Micetic
Notary Public

My commission expires:
April 25, 1994

W. Nevada2. P1d

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES
AND THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT
FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE
CENTRAL ARIZONA PROJECT

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3 UNITED STATES
4 DEPARTMENT OF THE INTERIOR
5 BUREAU OF RECLAMATION

6 CONTRACT BETWEEN THE UNITED STATES
7 AND THE CENTRL ARIZONA WATER CONSERVATION DISTRICT
8 FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE
9 CENTRAL ARIZONA PROJECT

10 1. PARTIES

11 The parties to this contract, executed as of this first day of
12 December, 1988, are the United States of America, acting through the
13 Department of the Interior, and the Central Arizona Water Conservation
14 District, a multi-county water conservation district organized under
15 the laws of Arizona, with its principal place of business in Phoenix,
16 Arizona.

17 2. AUTHORITIES

18 This contract is made pursuant to the:

19 2.1 Act of June 17, 1902, 32 Stat. 388, and acts amendatory
20 thereof and supplementary thereto.

21 2.2 Boulder Canyon Project Act, approved December 21, 1928,
22 45 Stat. 1057, a supplement to the Federal Reclamation Laws.

23 2.3 Reclamation Project Act of 1939, approved August 4, 1939,
24 53 Stat. 1187, as amended.

25 2.4 Colorado River Basin Project Act, approved
26 September 30, 1968, 82 Stat. 885, as amended, a supplement to the Federal
Reclamation Laws.

1 2.5 Arizona Revised Statutes, Section 48-3701 et seq.

2 3. RECITALS

3 3.1 The Colorado River Basin Project Act provides, among other
4 things, that for the purposes of furnishing irrigation water
5 and municipal and industrial water supplies to water-deficient areas
6 in Arizona and western New Mexico through direct diversion or exchange
7 of water, control of floods, conservation and development of fish and
8 wildlife resources, enhancement of recreation opportunities, and
9 for other purposes, the Secretary of the Interior shall construct,
10 operate, and maintain the Central Arizona Project, consisting of the
11 principal works hereinafter described in Article 6.3.

12 3.2 Pursuant to the provisions of Arizona Revised Statutes,
13 Section 48-3701 et seq., the Central Arizona Water Conservation District
14 has been organized with the power to enter into a contract or contracts with
15 the Secretary of the Interior to accomplish the purposes of Arizona Revised
16 Statutes, Section 48-3701 et seq.

17 3.3 On December 15, 1972, the United States and the Contractor
18 entered into a contract entitled "Contract Between the United States and the
19 Central Arizona Water Conservation District for Delivery of Water and
20 Repayment of Costs of the Central Arizona Project" (Contract
21 No. 14-06-W-245), whereby, among other things, the United States agreed to
22 construct the Central Arizona Project and the Contractor agreed to repay the
23 costs of the project properly allocable to the Contractor.

24 3.4 Subarticle 9.3(b) of said contract provides that the
25 Contractor's repayment obligation shall not exceed \$1.2 billion.

26 3.5 Subarticle 9.3(b) of said contract also provides that if the

1 Contractor's repayment obligation will exceed \$1.2 billion, the
2 Contracting Officer shall consult with the Contractor and continuation of
3 construction will be contingent upon the execution of an amendatory contract
4 to cover the increased repayment obligation.

5 3.6 Both parties acknowledge that the Contractor's repayment
6 obligation will exceed \$1.2 billion, and have agreed to increase the
7 Contractor's repayment ceiling to a level sufficient to facilitate
8 completion of the project.

9 4. ARTICLES OF AGREEMENT

10 NOW, THEREFORE, in consideration of the mutual and dependent
11 stipulations and covenants herein contained, it is agreed by and between the
12 parties hereto as follows:

13 5. DEFINITIONS

14 When used herein, unless otherwise distinctly expressed, or
15 manifestly incompatible with the intent hereof, the terms:

16 5.1 "Federal Reclamation Laws" or "Reclamation Laws" shall
17 mean the Act of June 17, 1902, 32 Stat. 388, and all acts amendatory
18 thereof or supplementary thereto.

19 5.2 "Basin Project Act" shall mean the Colorado River Basin
20 Project Act, 82 Stat. 885, dated September 30, 1968, as amended, which is a
21 supplement to the Federal Reclamation Laws.

22 5.3 "Secretary" shall mean the Secretary of the Interior of the
23 United States or his duly authorized representative.

24 5.4 "Contracting Officer" shall mean the Secretary or his
25 authorized designee acting in his behalf.

26 5.5 "Contractor" shall mean the Central Arizona Water

1 Conservation District, organized pursuant to Arizona Revised Statutes,
2 Section 48-3701 et seq.

3 5.6 "Service area" shall mean the area now included within
4 the Central Arizona Water Conservation District, consisting of Maricopa,
5 Pinal, and Pima Counties of Arizona and such other counties as may
6 hereafter become part of the District, exclusive of any Indian reservation
7 land lying wholly or partly within said Counties.

8 5.7 "Subcontractor" shall mean any irrigation district,
9 municipality, individual, or any entity which enters into a water service
10 subcontract with the United States and the Contractor in furtherance of the
11 provisions of the Basin Project Act.

12 5.8 "Central Arizona Project" or "project" shall mean the
13 project and works authorized by Section 301(a) of the Basin Project
14 Act and constructed by the United States pursuant to the provisions
15 of said Act and this contract.

16 5.9 "Project works" shall mean the principal works described
17 in Section 301(a) of the Basin Project Act, and appurtenances thereto,
18 or as modified pursuant to Article 6.4 hereof, together with lands,
19 interests in lands, and rights-of-way for such works and appurtenances.

20 5.10 "Water supply system" shall mean the Navajo Project, Havasu
21 Pumping Plant, the Granite Reef, Salt Gila and Tucson aqueducts and
22 associated pumping plants and appurtenant works, but not including Tucson
23 Terminal Storage or any distribution works.

24 5.11 "Distribution works" shall mean those facilities
25 constructed or financed by the United States under the authorization in
26 Section 309(b) of the Basin Project Act for the primary purpose of

1 distributing the project water supply within the service area after said
2 project water supply has been transported or delivered through the water
3 supply system.

4 5.12 "Agricultural water" or "irrigation water" shall mean
5 project water used primarily in the commercial production of agricultural
6 crops or livestock, including domestic use incidental thereto, on tracts of
7 land operated in units of more than 5 acres.

8 5.13 "Miscellaneous water" shall mean water delivered from the
9 project, or by exchange for project water, for recreational and fish and
10 wildlife purposes at other than project facilities and shall have a lesser
11 priority of use than agricultural water.

12 5.14 "Municipal and industrial water," herein referred
13 to as "M&I water," shall mean project water other than agricultural or
14 miscellaneous water delivered by means of the project works.

15 5.15 "Lands not having a recent irrigation history" shall
16 mean, except where otherwise determined by the Secretary for efficiency of
17 subcontractor's operation, lands which the Secretary determines were not
18 irrigated during the period September 30, 1958, to September 30, 1968.

19 5.16 "OM&R" shall mean the care, operation, maintenance, and
20 replacement of project works.

21 5.17 "Exchange water" shall mean Colorado River water made
22 available in exchange for or in replacement of existing supplies from
23 surface sources other than the mainstream of the Colorado River.

24 5.18 "Transferred works" shall mean such facilities of the water
25 supply system or of other construction stages as to which OM&R
26

1 responsibility is transferred from the United States to the Operating
2 Agency.

3 5.19 "Operating Agency" shall mean the entity or entities
4 authorized to assume OM&R responsibility of transferred works and approved
5 for that purpose by the Contracting Officer.

6 5.20 "Transfer notice" shall mean a written notice or notices,
7 numbered consecutively, which the Contracting Officer transmits to the
8 Operating Agency and which shall designate:

9 (a) the transferred works;

10 (b) items of equipment and supplies transferred to the
11 Operating Agency; and

12 (c) the date upon which such transfer will be effected.

13 5.21 "Gila River system waters" shall mean waters of the
14 Gila River and tributaries thereof east of the Yuma-Maricopa County line.

15 5.22 "Notice of completion" shall mean the notice which the
16 Contracting Officer issues to Contractor to announce the substantial
17 completion of a construction stage. Each such notice of completion shall
18 include the estimated amount of the repayment obligation for the
19 construction stage to which the notice pertains, the date of initiation of
20 repayment for the construction stage and indicate the amount and due date
21 for the first payment for the construction stage.

22 5.23 "Development Fund" shall mean the separate fund, known
23 as the Lower Colorado River Basin Development Fund, established in
24 the Treasury of the United States pursuant to Section 403(a) of the
25 Basin Project Act.

26 5.24 "Year" shall mean the period January 1 through the next

1 succeeding December 31.

2 5.25 "Contractor's Construction Cost Repayment Obligation,"
3 hereinafter referred to as "repayment obligation," shall mean the total
4 amount of all construction costs including related construction claims and
5 interest thereon, OM&R costs during construction, and interest on costs
6 allocated to the M&I water and power functions during construction, of the
7 Central Arizona Project, incurred therefor and as determined by the
8 United States and further described in Article 6.2 hereof, excluding
9 reimbursable costs allocated to fish and wildlife and recreation, and costs
10 associated with the delivery of water to entities other than the Contractor
11 or subcontractors, and which is determined by the Secretary, after
12 consultation with the Contractor, to be allocable to and repayable by the
13 Contractor in accordance with the provisions of the Basin Project Act and
14 this contract.

15 5.26 "Return flow" shall mean all agricultural, M&I, and
16 miscellaneous waste water, seepage, and ground water which originates or
17 results from water contracted for from the Central Arizona Project, but
18 shall not include any water delivered through the project works for ground
19 water recharge purposes.

20 5.27 "Project water" shall mean (a) all water allocated by the
21 Secretary for project purposes by Federal Register notice dated
22 March 24, 1983, and any subsequent reallocation by the Secretary as
23 contemplated in paragraph 6 of said Federal Register notice, which water is
24 available pursuant to contracts with the Secretary from: (1) the
25 Colorado River; (2) Central Arizona Project dams and reservoirs; and (3)
26 return flows captured by the Secretary for project use; (b) any water

1 delivered to entities in Arizona, through the project works, as a
2 replacement supply for Cliff Dam; (c) water delivered to water users in
3 Arizona, through the project works, in exchange for water delivered to users
4 in New Mexico from or by means of the project works; and (d) any additional
5 water not included in (a) above, that is required to be delivered by the
6 Secretary through the project, pursuant to the Ak-Chin Water Rights
7 Settlement Act of 1978 (Public Law 95-328), as amended on October 19, 1984
8 (Public Law 98-530); the Southern Arizona Water Rights Settlement Act of
9 October 12, 1982 (Title III of Public Law 97-293); and, subject to the
10 execution of a settlement agreement by the Contractor providing for the
11 settlement of the water rights claims of the Salt River Pima-Maricopa Indian
12 Community and to the Salt River Pima-Maricopa Indian Community Water Rights
13 Settlement Act of 1988 (Public Law 100-512), up to 22,000 acre-feet annually
14 of Colorado River water to be delivered through the project works in
15 accordance with said settlement agreement and legislation.

16 5.28 "Indian lands" shall mean the lands within any Indian
17 reservation for which an allocation of project water has or will be made by
18 the Secretary for delivery through project works.

19 5.29 "Navajo Project" shall mean the interests of the United
20 States in the Navajo Generating Station and the Transmission System, or any
21 replacement thereof, as authorized by Section 303 of the Basin Project Act
22 and as described in contracts entered into pursuant to that Act.

23 5.30 "Construction stage" shall mean any one of the following:
24 (1) the water supply system; (2) New Waddell and Modified Roosevelt Dams;
25 (3) replacement features or programs for Cliff Dam; (4) Tucson terminal
26 storage; (5) Hooker Dam or suitable alternative; and (6) Buttes Dam.

1 5.31 "Plan 6" shall mean Plan 6 for the Regulatory Storage
2 Division of the Central Arizona Project as approved by Record of Decision
3 of the Secretary dated April 3, 1984 as amended and supplemented by Records
4 of Decision of the Secretary dated May 20, 1986 (Supplement One) and
5 June 17, 1988 (Supplement Two).

6 5.32 "Allocable cost" shall mean (a) with respect to the project,
7 the total project cost less (1) the cost of non-Indian distribution works,
8 (2) the cost of the safety of dams component of Plan 6, (3) the cost of
9 Indian distribution systems, (4) the cost of the Colorado River Division and
10 the New Mexico fish hatchery, (5) the cost of cultural resources studies,
11 (6) the contributions provided by the States of Arizona and New Mexico prior
12 to execution of the Plan 6 Funding Agreement, (7) the costs of Charleston
13 Dam and San Pedro Aqueduct, (8) the cost of 500 cubic feet per second of
14 incremental capacity in the Granite Reef Aqueduct and related costs in the
15 Navajo Project, and (9) such other costs as determined appropriate by the
16 Contracting Officer; and (b) with respect to each construction stage, the
17 total cost of such stage less that portion of the following costs associated
18 with such stage: (1) the cost of the safety of dams component of Plan 6,
19 (2) the cost of cultural resources studies, (3) the contributions provided
20 by the States of Arizona and New Mexico prior to execution of the Plan 6
21 Funding Agreement, (4) the cost of 500 cubic feet per second of incremental
22 capacity in the Granite Reef Aqueduct and related costs in the Navajo
23 Project, and (5) such other costs as determined appropriate by the
24 Contracting Officer.

25 5.33 "OM&R Transfer Contract" shall mean the August 5, 1987,
26 contract entitled "Contract Between the United States of America and the

1 Central Arizona Water Conservation District for the Transfer of Operation
2 and Maintenance of Facilities" (Contract No. 7-07-30-W0167), and any
3 amendment or revision thereof.

4 5.34 "Overall repayment period" shall mean the period of time
5 beginning with initiation of repayment of the first construction stage and
6 ending with final payment of the last construction stage.

7 5.35 "Plan 6 Funding Agreement" shall mean the April 15, 1986,
8 agreement entitled "Agreement Among the United States, the Central Arizona
9 Water Conservation District, the Flood Control District of Maricopa County,
10 the Salt River Agricultural Improvement and Power District and Salt River
11 Valley Water Users' Association, the Arizona Cities of Chandler, Glendale,
12 Mesa, Phoenix, Scottsdale, and Tempe, the State of Arizona, and the City of
13 Tucson for Funding of Plan Six Facilities of the Central Arizona Project,
14 Arizona, and for other Purposes," as it may be supplemented or amended.

15 5.36 "Permanent service" shall mean that water supply service
16 commencing in the year following substantial completion of the water supply
17 system and continuing in perpetuity.

18 5.37 "Ground water recharge" shall mean the recharge of water
19 pursuant to title 45, chapter 2, article 13, Arizona Revised Statutes, or
20 the underground storage and recovery of water pursuant to title 45,
21 chapter 3, Arizona Revised Statutes, or as said statutes may hereafter be
22 amended or revised.

23 5.38 "Project power" shall mean the United States' entitlement
24 to capacity and energy from the Navajo Project.

25 6. PROJECT CONSTRUCTION

26 6.1 Agreement of the United States. Subject to the terms and

1 conditions of this contract and within the limits of the funds made
 2 available therefor by Congress, the United States will expend toward the
 3 construction of the project, exclusive of interest costs during
 4 construction, \$832,180,000 based on 1967 cost estimates, plus or minus such
 5 amounts, if any, as may be justified by reason of ordinary fluctuations in
 6 construction costs as indicated by engineering cost indices applicable to
 7 the types of construction involved therein, or so much of such amount, as in
 8 the opinion of the Secretary, is necessary to construct said project,
 9 whichever amount is the lesser. The aforementioned amount includes the
 10 United States' costs of participation in the Navajo Project.

11 6.2 Costs of Project.

12 (a) The estimated construction cost of \$832,180,000 for the
 13 project, based upon 1967 prices, has been determined as follows:

<u>Main System</u>	<u>\$ 1,000's</u>
Granite Reef Division	407,740
Orme Division	42,340
Salt-Gila Division	47,170
Tucson Aqueduct (Colorado River source)	46,300
Buttes Dam	35,240
Navajo Project	<u>106,000</u>
Subtotal	684,790
<u>Other Separate Features</u>	
Hooker Dam or suitable alternative	31,730
Charleston Dam and San Pedro Aqueduct (San Pedro River source)	<u>36,420</u>
Subtotal	68,150
<u>Miscellaneous Features</u>	
*Gila River Division	5,250
Indian Distribution System	19,970
Colorado River Division	42,450
Drainage System	<u>11,570</u>
Subtotal	79,240
Total Project	<u>\$832,180</u>

14 *Note: Fish hatchery costs, some of which may be located on the
 15 Colorado-River.

16 Provided, however, That (i) the adjustment provisions of Article 6.1 apply

1 to the total construction costs of the project and not to the costs of the
2 individual line items set out in this Subarticle 6.2(a), and (ii) in
3 accordance with provisions of Article 6.4 herein, the references to the
4 individual line items set out in this Subarticle 6.2(a) are not to be deemed
5 a determination that each of the features referred to in the individual line
6 items will be constructed or that costs will be incurred for each of said
7 individual line items based upon a percentage which the estimated costs for
8 each individual line item bears to the project's total estimated
9 construction costs.

10 (b) The Central Arizona Project costs incurred by the
11 United States which are to be repaid by Contractor shall include the share
12 allocated to the Contractor of (i) construction costs of the project, (ii)
13 all expenses of whatsoever kind or nature heretofore or hereafter incurred
14 by the United States in connection with, growing out of, or resulting from
15 the construction, and (iii) the OM&R during construction of project works.
16 The aforementioned share of allocated costs shall also include, but shall
17 not be limited to, interest during construction on costs allocated to the
18 M&I water and power functions, the cost of labor, materials, equipment,
19 engineering, legal services, surveys, investigations, property,
20 superintendence, administration, overhead, general expenses, special
21 services, damages of all kinds and character, inspection, repair, and
22 protection of project works and water supply, and the costs of all lands,
23 interests in lands, and rights-of-way acquired by the United States for the
24 project, all as determined by the Secretary.

25 6.3 Principal Works of the Project. The works and facilities to
26 be constructed under this contract shall consist of the following principal

1 works:

2 (a) A system of main conduits and canals, including the
3 Havasu Pumping Plant and a main canal and pumping plants (Granite Reef
4 Aqueduct and pumping plants), for diverting and carrying water from
5 Lake Havasu to the confluence of the Salt and Verde Rivers, which system
6 will have a capacity of 3,000 cubic feet per second;

7 (b) Salt-Gila Aqueduct and pumping plant;

8 (c) Tucson Aqueduct and pumping plants;

9 (d) New Waddell and Modified Roosevelt Dams;

10 (e) replacement features or programs for Cliff Dam;

11 (f) Tucson Terminal Storage (if approved by the Secretary);

12 (g) Buttes Dam and Reservoir;

13 (h) Hooker Dam and Reservoir or suitable alternative which
14 shall be constructed in such manner as to give effect to the provisions of
15 Section 304(f) of the Basin Project Act;

16 (i) Charleston Dam and Reservoir and the San Pedro Aqueduct;

17 (j) related canals, regulating facilities, and electric
18 transmission facilities required for the operation of said principal works;

19 (k) related water distribution and drainage works; and

20 (l) appurtenant works.

21 No works or facilities for the treatment of water are included in the
22 project works to be constructed by the United States. Nothing contained
23 herein shall be construed to indicate the order in which the aforescribed
24 works will be constructed.

25 6.4 Changes in Project Works. Should the Secretary, either
26 before or during construction, determine it to be in the best interests of

1 the project, he may, upon the completion of the studies currently being made
2 er to be made, including land classifications, hydrological, engineering,
3 geological, sedimentation, water supply, and repayment ability, and after
4 consultation with the Contractor, change the location, size, or capacity of
5 any of the project works, or may eliminate works, or add works to those
6 described above, and the Secretary's decision on such changes,
7 eliminations, and additions shall be conclusive.

8 6.5 Construction Conditions. The United States shall be under
9 no obligation to commence or, having commenced, to continue construction of
10 project works until transfer from the State of Arizona of such State-owned
11 lands or interests therein, in a form acceptable to the Attorney General of
12 the United States, as the Secretary determines is necessary in the
13 construction, operation, or maintenance of the project.

14 6.6 Annual Work Program. During construction of the project
15 works the Contracting Officer will consult with the Contractor and/or with
16 any subcontractor through or within whose service area project works are to
17 be constructed to achieve maximum coordination between such construction
18 program and the annual programs of any affected subcontractor. Within
19 30 days following the enactment by Congress and Presidential approval of
20 annual or supplementary appropriation acts and the allotment of funds
21 thereunder for continued construction of the project, the United States will
22 furnish the Contractor with a notice and statement showing the proposed
23 construction program for the balance of the current fiscal year and for the
24 following fiscal year or years. If so requested in writing by the
25 Contractor within 30 days of its receipt of such notice, the Secretary will
26 consult with the Contractor and/or the affected subcontractor with respect

1 to the proposed program. The action of the Contracting Officer concerning
2 the program after such consultation shall be final.

3 6.7 Inability of the United States to Complete Project on Basis
4 of Cost Estimates. If construction of the project works shall have been
5 commenced but, prior to completion, the Secretary determines that the cost
6 of constructing the project will exceed the maximum amount to be expended
7 therefor by the United States as provided for in Article 6.1 hereof, the
8 Secretary may after consultation with the Contractor terminate construction
9 and declare the obligations of the United States hereunder with regard to
10 completion of construction of the project to have been fulfilled. If
11 appropriations for the continuance and/or completion of construction in
12 amounts sufficient in the opinion of the Secretary to complete said
13 construction are authorized by Congress and are available, the Secretary
14 shall consult with the Contractor and shall make continuation of
15 construction contingent upon the execution of an amendatory contract with
16 the Contractor wherein the Contractor's maximum repayment obligation is
17 increased so as to cover the increased reimbursable costs as determined by
18 the Secretary; Provided, however, That the Contractor shall not utilize any
19 part of the completed or unfinished project facilities in the absence of
20 written agreement with the Secretary for reimbursement therefor.

21 7. PROJECT OPERATION, MAINTENANCE, AND REPLACEMENT

22 7.1 Operation and Maintenance and Water Deliveries by the
23 United States Prior to Completion of Construction. Except as provided in
24 the OM&R Transfer Contract, prior to completion of project works by the
25 United States, as determined and announced to the Contractor in writing by
26 the Secretary, the United States will operate and maintain said project

1 facilities. The cost of said OM&R allocated to the Contractor shall be
2 included in the Contractor's repayment obligation; Provided, however, That
3 said OM&R cost shall not be included with the project cost ceiling set out
4 in Article 6.1 hereof. During the aforesaid period, project water, if
5 available, may be disposed of by the Secretary at charges which the
6 Secretary determines to be appropriate; Provided, however, That to the
7 extent deemed feasible by the Secretary, preference will be given to
8 subcontractors and Indian lands. Payment for water shall be made in advance
9 by the water user. The places of measurement and delivery of said water
10 shall be established by the Secretary after consultation with the
11 Contractor. Except as provided in the OM&R Transfer Contract, the proceeds
12 accruing from the disposal of such water shall be credited to the
13 Development Fund and applied toward the costs of the project as determined
14 by the Secretary.

15 7.2 Operation and Maintenance and Water Deliveries after
16 Completion of Construction. Except as provided in the OM&R Transfer
17 Contract and any future agreements for the transfer of OM&R of the project
18 works or portions thereof, upon completion of construction of a
19 construction stage or upon completion of construction of the project, the
20 United States shall operate and maintain such construction stage or the
21 project and shall make project water available to project water users.

22 8. DELIVERY OF WATER

23 8.1 Obligation of United States. Subject to the terms,
24 conditions, and provisions set forth herein, the United States will deliver
25 project water to Contractor and, during such periods as it operates and
26 maintains the water supply system, the United States will also transport and

1 deliver said water to the subcontractors. After transfer of OM&R the
2 United States will make deliveries of Colorado River water to the Operating
3 Agency; deliveries of other project waters will be made pursuant to
4 determinations made by the Secretary.

5 8.2 Term of Contract. Subject to the terms, conditions, and
6 provisions set forth herein, this contract is for permanent service.

7 8.3 Conditions Relating to Delivery.

8 (a) The obligation of the United States to deliver water
9 under this contract is subject to:

10 (i) The availability of such water for use in Arizona
11 under the provisions of the Colorado River Compact,
12 executed November 24, 1922; the Boulder Canyon
13 Project Act, 45 Stat. 1057, dated December 21,
14 1928; the Colorado River Basin Project Act, dated
15 September 30, 1968, 82 Stat. 885; the contract
16 between the United States and the State of Arizona,
17 dated February 9, 1944; the Opinion of the
18 Supreme Court of the United States in the case of
19 Arizona v. California et al., 373 U.S. 546,
20 rendered June 3, 1963; and the March 9, 1964,
21 Decree of that Court in said case, 376 U.S. 340, as
22 amended on February 28, 1966, at 383 U.S. 268, and
23 supplemented on January 9, 1979, at 439 U.S. 419,
24 as now issued or hereafter modified.

25 (ii) Executive A, Seventy-eighth Congress, Second
26 Session, a treaty between the United States of

1 America and the United Mexican States, signed at
2 Washington on February 3, 1944, relating to the
3 utilization of the water of the Colorado River and
4 Tijuana River and of the Rio Grande from
5 Fort Quitman, Texas, to the Gulf of Mexico, and
6 Executive H, Seventy-eighth Congress,
7 Second Session, a protocol signed at Washington on
8 November 14, 1944, supplementary to the Treaty.

9 (iii) The express understanding and agreement by the
10 Contractor that this contract is subject to
11 the condition that Hoover Dam and Lake Mead shall
12 be used: first, for river regulation, improvement
13 of navigation, and flood control; second, for
14 irrigation and domestic uses and satisfaction of
15 present perfected rights in pursuance of
16 Article VIII of the Colorado River Compact approved
17 by Section 13(a) of the Boulder Canyon Project Act;
18 and third, for power; and furthermore, that
19 this contract is made upon the express condition
20 and with the express covenant that all rights
21 hereunder shall be subject to and controlled by the
22 Colorado River Compact and that the United States
23 and the Contractor shall observe and be subject to
24 and controlled by said Colorado River Compact and
25 Boulder Canyon Project Act in the construction,
26 management, and operation of Hoover Dam,

1 Lake Mead, canals and other works, and the
2 storage, diversion, delivery, and use of water
3 to be delivered to Contractor hereunder.

4 (iv) The right of the United States temporarily to
5 discontinue or reduce the amount of water to be
6 delivered hereunder whenever such discontinuance or
7 reduction is made necessary for purposes of
8 investigations, inspections, replacements,
9 maintenance, or repairs to any works whatsoever
10 affecting, utilized or, in the opinion of the
11 Secretary, necessary for delivery of water
12 hereunder, it being understood that so far as
13 feasible the United States will (1) do so during
14 periods of low water demands and (2) give
15 reasonable notice in advance of such temporary
16 discontinuance or reduction.

17 (b) Delivery of Colorado River water by the United States
18 under this contract shall be charged to the State of Arizona's apportionment
19 under the aforementioned Supreme Court Decree of March 9, 1964, in
20 Arizona v. California and will discharge to that extent the obligation of
21 the United States to deliver water under the aforementioned contract between
22 the United States and the State of Arizona, dated February 9, 1944.

23 8.4 Delivery Points. Colorado River water to be furnished
24 to the Contractor pursuant to this contract will be delivered by the
25 United States in the Colorado River at the point of diversion from
26 Lake Havasu where the intake structures of the Havasu Pumping Plant are

1 constructed. Agua Fria and Upper Gila River system waters will be
2 delivered to the Contractor at New Waddell and Buttes Dams, respectively.
3 Delivery points for other project water supplies and for return flows will
4 be determined by the Contracting Officer after consultation with the
5 Contractor and/or the affected subcontractor therefor.

6 **8.5 Measurement.**

7 (a) The quantity of Colorado River water pumped from
8 Lake Havasu for the project shall be measured by means of measuring devices
9 to be installed as part of the project works. If, for any reason, in the
10 opinion of the Secretary, said measuring devices shall fail to operate
11 satisfactorily, the Secretary will, from the best information available,
12 estimate the amount of water delivered to the Contractor.

13 (b) Deliveries of project water to the various
14 subcontractors shall be measured by means of measuring devices to be
15 installed as part of the project works at the points along the various
16 aqueducts at which such water may be diverted for each of said
17 subcontractors, and/or at the points in the various reservoirs formed by the
18 dams constructed as part of the project works at which such water may be
19 diverted for subcontractors and/or at the points where return flow may be
20 delivered. These points of measurement will be established by the Secretary
21 after consultation with Contractor and the affected subcontractor. If, for
22 any reason, in the opinion of the Secretary, said measuring devices shall
23 fail to operate satisfactorily, the Secretary will, from the best
24 information available and after consultation with the Contractor and the
25 affected subcontractor, estimate the amount of water delivered to each such
26 subcontractor. The Secretary shall at all times have access over any lands

1 and rights-of-way of a subcontractor for the purpose of inspecting and
2 checking said measuring devices.

3 8.6 Responsibility for Distribution of Water after Leaving
4 Water Supply System. Whether or not the United States operates and
5 maintains the project facilities, the United States shall not be responsible
6 for the control, carriage, handling, use, disposal, or distribution of water
7 after said water has been diverted from the water supply system. At such
8 time as the Operating Agency assumes responsibility for the OM&R of project
9 works, the responsibility for diversion, carriage, and transportation of
10 the water through the water supply system shall be the sole responsibility
11 of the Operating Agency. Responsibility for distribution of water beyond
12 the water supply system shall be that of the subcontractors to whom said
13 water is delivered from the water supply system. The United States, its
14 officers, agents, and employees, shall not be liable for damage or claim of
15 damage of any nature whatsoever for which there is legal responsibility
16 arising out of or connected with the control, carriage, handling, use,
17 disposal, or distribution of such water, and each subcontractor shall hold
18 the United States, its officers, agents, and employees, harmless from any
19 and all such claims.

20 8.7 Quantity of Water to be Delivered.

21 (a) The Secretary reserves the right to determine that
22 quantity of Colorado River water to be released each year from Lake Mead for
23 use by the Central Arizona Project pursuant to applicable law, which shall
24 include the quantity of water which may be allocated by the Secretary for
25 use on Indian lands.

26 (b) The quantity of Colorado River water available under

1 this contract for project purposes shall not exceed the quantity of water
2 available to Arizona under the aforementioned Supreme Court Decree in
3 Arizona v. California and in Arizona's water delivery contract with the
4 United States after first providing for satisfaction of:

5 (i) present perfected rights and perfected rights
6 described in Article II(D) of the Decree and the
7 rights of other Federal reservations established
8 prior to September 30, 1968; Provided, however,
9 That the quantities of Colorado River water
10 reserved to satisfy the aforesaid rights shall not,
11 except as provided in said Decree, be reduced
12 under any circumstances or for any reason what-
13 soever including, without limitation, a temporary
14 use permitted by the Secretary by other water users
15 in Arizona, California, or Nevada, of water
16 reserved pursuant to the foregoing but not
17 needed during any calendar year; And provided
18 further, That no rights to the recurrent use of
19 such water shall accrue by reason of said temporary
20 use; and

21 (ii) the quantities of water provided for in all
22 water delivery contracts between the United States
23 and water users in Arizona as of September 30,
24 1968.

25 (c) The quantity of Colorado River water available under
26 this contract for project purposes, including water for use on Indian lands

1 shall have the same priority as to delivery as the quantities of
2 Colorado River water delivered pursuant to water delivery contracts,
3 Federal reservations of water, and other arrangements between the
4 United States and water users in Arizona entered into subsequent to
5 September 30, 1968, for use of Colorado River water on Federal, State or
6 privately owned lands in Arizona in total quantities not to exceed
7 164,652 acre-feet of diversions per year; Provided, however, That the
8 Contractor shall hold the United States, its officers, agents, employees,
9 and successors or assigns, harmless as to any and all claims for damages to
10 persons or to property direct or indirect and of whatever nature, arising
11 out of or which may in any manner be connected with the operation and/or
12 effect of this Subarticle.

13 (d) The limitation on contracting in Subarticle 8.7(c) above
14 shall not apply to contracts with holders of present perfected rights to
15 Colorado River water in Arizona or to the Secretary's order of
16 November 24, 1982, reserving Colorado River water for the Cibola National
17 Wildlife Refuge. Nothing in Subarticle 8.7(c) shall restrict the right of
18 the Secretary under water service contracts referred to in said Subarticle
19 to terminate and/or reduce any entity's entitlement to Colorado River water
20 and to make that entitlement available to other water users in Arizona.

21 (e) During any year when the subcontractors cannot use any
22 portion of their entitlement to project water, and such water cannot be
23 resold or exchanged in accordance with the terms and conditions of the water
24 service subcontracts, the Contractor shall have the right in its discretion
25 to resell any or all of such water or to use any or all of such water for
26 ground water recharge purposes, including the subsequent recovery and resale

1 of such water, subject to Federal law, including but not limited to the
2 Reclamation Reform Act of 1982, State of Arizona law, and such rules and
3 regulations as the Secretary may deem appropriate. Subject to the terms and
4 conditions of water service subcontracts, the water orders of all
5 subcontractors shall be met before any project water is made available to
6 the Contractor under this provision.

7 8.8 Subcontracts.

8 (a) The United States shall be a party to subcontracts.

9 (b) The Secretary and the Contractor shall require in each
10 subcontract that:

11 (i) unless and until otherwise provided by Congress,
12 water from the Central Arizona Project shall not
13 be made available directly or indirectly for the
14 irrigation of lands not having a recent irrigation
15 history, as determined by the Secretary, except in
16 the case of Indian lands, national wildlife
17 refuges, and, with the approval of the Secretary,
18 State-administered wildlife management areas;

19 (ii) there be in effect measures, adequate in the
20 judgment of the Secretary and the Contractor,
21 to control expansion of irrigation from aquifers
22 affected by irrigation in the Contractor's service
23 area and to reduce pumping of ground water in the
24 agricultural subcontractors' service areas by the
25 amount of project water received by said
26 agricultural subcontractors;

1 (iii) the canals and distribution systems through which
2 water is conveyed after its delivery to the sub-
3 contractors shall be provided and maintained with
4 linings adequate in the Secretary's judgment to
5 prevent excessive conveyance losses;

6 (iv) neither the Secretary, the Contractor nor any
7 subcontractor shall pump or permit others to pump
8 ground water from within the exterior boundaries of
9 the service area of a subcontractor receiving
10 water from the Central Arizona Project for any use
11 outside of said subcontractor's service area
12 unless the Secretary, the Contractor, and such
13 subcontractor shall agree, or shall have previously
14 agreed, that a surplus of ground water exists and
15 that drainage is or was required;

16 (v) except as otherwise agreed by the Contracting
17 Officer, neither the Contractor nor any
18 subcontractor shall sell or otherwise dispose of or
19 permit the sale or other disposition of any project
20 water, including return flows, for use outside the
21 Contractor's service area;

22 (vi) irrigation water made available thereunder may
23 be made available by the Secretary for M&I purposes
24 if and to the extent that such water is no longer
25 required by the subcontractor for irrigation
26 purposes and shall be made available in all cases

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where lands receiving project water have been converted to municipal and industrial use; Provided, however, That subcontracts effectuating such transfers are subject to the approval of the Secretary and the Contractor, which approval shall not be withheld unreasonably; And provided further, That it shall be deemed unreasonable for the Secretary or the Contractor to withhold such approval on the basis that the right to convert from irrigation to M&I use for a specific development could better be exercised in some other subcontractor's service area. The water so converted from irrigation to M&I purposes will be delivered with the same priority and at the same rate per acre-foot as other M&I water. Likewise, subcontracts for furnishing water for M&I purposes, including, but not limited to, ground water recharge to the extent ground water recharge is consistent with Arizona law, shall provide that, if water to be delivered thereunder is not presently required for such purposes, such water may be made available by the Secretary to other users; Provided, further, That the subcontractor shall be relieved of its payment obligation under its subcontract only to the extent of the amount paid by such other users;

1 (vii) the acreage limitation provisions of Reclamation
2 Laws shall apply solely to agricultural water
3 service;

4 (viii) except as specifically provided therein, it shall
5 be the provisions of this contract which shall be
6 controlling in the event of any inconsistency
7 between this contract and any subcontract;

8 (ix) the subcontractor shall levy all necessary assess-
9 ments, tolls, and other charges and shall use all
10 of the authority and resources available to the
11 subcontractor to collect the same in order that the
12 subcontractor may meet its obligations thereunder
13 to make in full all payments required under said
14 subcontract on or before the date such payments
15 become due and to meet other obligations under the
16 subcontracts;

17 (x) the subcontractor establish, maintain, and provide
18 the United States and the Contractor with land,
19 water use, and crop census records.

20 8.9 Shortages. As provided in Section 301(b) of the Basin
21 Project Act, Article II(B)(3) of the Decree of the Supreme Court of the
22 United States in Arizona v. California, 376 U.S. 340, dated March 9, 1964,
23 shall be so administered that in any year in which, as determined by the
24 Secretary, there is insufficient mainstream Colorado River water available
25 for release to satisfy the annual consumptive use of 7,500,000 acre-feet in
26 Arizona, California, and Nevada, diversions from the mainstream of the

1 Colorado River for the Central Arizona Project and for other uses in Arizona
2 under contracts or other agreements with the United States executed
3 subsequent to September 30, 1968, shall be so limited as to assure
4 the availability of water in quantities sufficient to provide for
5 the aggregate annual consumptive use by holders of present perfected
6 rights, by other users in the State of California served under contracts
7 existing as of September 30, 1968, with the United States by diversion works
8 heretofore constructed, and by other Federal reservations in California of
9 4,400,000 acre-feet of Colorado River water, and by users of the same
10 character in Arizona and Nevada. Water users in the State of Nevada shall
11 not be required to bear shortages in any proportion greater than would have
12 been imposed in the absence of said Section 301(b), nor shall said Section
13 affect the relative priorities, among themselves, of water users in Arizona,
14 California, and Nevada which are senior to diversions for the Central
15 Arizona Project, or amend any provisions of said Decree. The aforesaid
16 limitation stated in Section 301(b) shall not apply so long as the
17 Secretary shall determine and proclaim that means are available and
18 in operation which augment the water supply of the Colorado River system in
19 such quantity as to make sufficient Colorado River mainstream
20 water available for release to satisfy annual consumptive use of
21 7,500,000 acre-feet in Arizona, California, and Nevada.

22 8.10 Rate of Diversions of Colorado River Water. Subject to
23 (a) the first proviso in Section 301(a) of the Basin Project Act, (b) the
24 provisions of Subarticle 10.6(b) hereof, and (c) the provisions of
25 Subarticle 8.7(a) hereof, any capacity in the Granite Reef Aqueduct in
26 excess of 2,500 cubic feet per second may be utilized in the operations of

1 the project so as to maximize project benefits; Provided, however, That the
2 use of such capacity shall not result in the annual diversion of a quantity
3 of water in excess of the project's legal entitlement under the Basin
4 Project Act.

5 8.11 Priority in Case of Shortage.

6 (a) Subject to the provisions of Section 304(e) of the Basin
7 Project Act and the Secretary's allocation decisions published in the
8 Federal Register on December 10, 1980, and March 24, 1983, any project water
9 as defined in Subarticle 5.27(a) hereof, furnished through project
10 facilities shall, in the event of shortages thereof, be reduced pro rata
11 until exhausted, first for miscellaneous uses and next for agricultural
12 uses, before such project water furnished for M&I uses is reduced.
13 Thereafter, such project water for M&I uses will be reduced pro rata among
14 all M&I water users. Each subcontract or other water delivery arrangement
15 entered into pursuant to this contract shall so provide. This article shall
16 not apply to Indian uses; Provided, however, That the relative priorities
17 between Indian and non-Indian uses shall be as determined by the Secretary.
18 Notwithstanding the provisions of this Subarticle, project water made
19 available as a result of construction and operation of modifications to
20 Roosevelt Dam as part of Plan 6 shall be distributed as provided in the
21 Plan 6 Funding Agreement, and shall not be subject to reduction in the event
22 of shortages of other project water supplies.

23 (b) Any project water, as defined in Subarticles 5.27(b),
24 (c) and (d) hereof, shall retain its priority relative to project water as
25 defined in Subarticle 5.27(a) hereof.

26 8.12 No Guarantee of Availability of Water. The United States

1 assumes no responsibility with respect to the quantity of water available
2 for delivery pursuant to this contract. In no event shall the
3 United States, its officers, agents, or employees, be liable for any
4 damages, direct or indirect, of whatsoever nature, arising out of or in any
5 way connected with any suspension or reduction in the delivery of water
6 pursuant to this contract or with any shortage in the quantity of water
7 available for delivery hereunder or to any subcontractor for any cause
8 whatsoever including, but not limited to, drought, delay in the construction
9 of the Navajo Project, the failure of the Navajo Project to be completed, or
10 the lack of power for pumping.

11 8.13 Secretarial Control of Return Flow.

12 (a) The Secretary reserves the right to capture all return
13 flow flowing from the exterior boundaries of the Contractor as a source of
14 supply and for distribution to and use of the Central Arizona Project to the
15 fullest extent practicable. The Secretary also reserves the right to
16 capture for project use return flows within the boundaries of Contractor if
17 in his judgment such return flow is not being put to a beneficial use. Any
18 subcontractor may sell its return flow; Provided, however, That except as
19 otherwise agreed by the Contracting Officer, such return flow may not be
20 sold for use outside the Contractor's exterior boundaries; And provided
21 further, That if the price received for such return flow is higher than the
22 price paid for such project water, the amount of the excess price shall be
23 paid by such subcontractor to the Contractor for application against the
24 Contractor's repayment obligation to the United States.

25 (b) Any return flow captured by the United States and
26 determined by the Secretary to be suitable and available for use on lands

1 within the service area and/or by any subcontractor therein may be delivered
2 by the United States to a subcontractor as a part of the water supply for
3 which the subcontractor contracts hereunder and such water shall be
4 accounted and paid for pursuant to the provisions hereof.

5 8.14 Water and Air Pollution Control. The Contractor, in
6 carrying out this contract, shall comply with all applicable water and air
7 pollution laws and regulations of the United States and the State of
8 Arizona, and shall obtain all required permits or licenses from the
9 appropriate Federal, State, or local authorities.

10 8.15 Quality of Water. The operation and maintenance of
11 project facilities shall be performed in such manner as is practicable to
12 maintain the quality of project water made available through such
13 facilities at the highest level reasonably attainable as determined by the
14 Contracting Officer or the Operating Agency. Neither the United States nor
15 the Operating Agency warrants the quality of water and are under no
16 obligation to construct or furnish water treatment facilities to maintain
17 or better the quality of water.

18 8.16 Exchange Water. Where the Secretary determines that a
19 subcontractor is physically able to receive Colorado River mainstream water
20 in exchange for or in replacement of existing supplies of surface water from
21 sources other than the Colorado River to provide water supplies for users
22 upstream from New Waddell, Modified Roosevelt and Buttes Dams, the
23 Secretary may require that said subcontractor agree to accept said
24 mainstream water in exchange for or in replacement of said existing supplies
25 pursuant to the provisions of Section 304(d) of the Basin Project Act.
26

1 8.17 Rights Reserved to the United States to Have Water Carried
2 by Project Facilities. As a condition to the construction of project
3 facilities and the delivery of water hereunder, the Contractor agrees that
4 all project facilities will be available for the diversion, transportation,
5 and carriage of water for Indian and non-Indian uses pursuant to
6 arrangements or contracts therefor entered into on their behalf with the
7 Secretary. In the event the responsibility for the OM&R of project
8 facilities is transferred to and assumed by the Operating Agency, such
9 transfer shall be subject to the condition that the Operating Agency shall
10 divert, transport, and carry such water for such uses pursuant to the
11 provisions of the aforesaid arrangements or contracts; Provided, however,
12 That the aforesaid arrangements or contracts will include provisions for the
13 payment of applicable construction costs and OM&R costs in accordance with
14 Articles 9.3 and 9.6 of this contract.

15 8.18 Wheeling Non-Project Water. After taking into
16 consideration the water delivery requirements of contracts for project water
17 service and subject to availability of project capacity, non-project water
18 may be wheeled through project facilities pursuant to wheeling agreements
19 between the Contractor and the entity desiring to use project facilities for
20 wheeling purposes. All such agreements shall be subject to the approval of
21 the Contracting Officer who shall consider, among other things, the impact
22 that the wheeling of such non-project water will have on the quality of
23 project water. The Contractor and the Contracting Officer shall jointly
24 develop a standard form of wheeling agreement including the rate structure
25 for wheeling non-project water. All wheeling charges shall be paid to the
26 Contractor by the entity contracting for the wheeling of non-project water.

1 The Contractor shall be entitled to retain revenues from wheeling charges
2 sufficient to cover all OM&R costs associated with wheeling such non-project
3 water, plus an administrative charge to be jointly determined by the
4 Contractor and the Contracting Officer. All revenues from wheeling charges
5 in excess of the OM&R costs and administrative charges shall be remitted by
6 the Contractor to the Contracting Officer and deposited into the
7 Development Fund.

8 8.19 Use of Project Power to Wheel Non-Project Water. If the
9 energy requirements necessary for the pumping of project water are met and
10 subject to the requirements of the Navajo Power Marketing Plan published in
11 the Federal Register on December 21, 1987, project power may be used to
12 wheel non-project water through project facilities under such conditions of
13 use, including amounts, times of use, losses, costs, and other conditions as
14 are established by the Contractor and approved by the Contracting Officer.

15 9. PAYMENT OF PROJECT COSTS ALLOCATED TO CONTRACTOR

16 9.1 Allocation of Construction Costs.

17 (a) Upon completion of each construction stage, the
18 Contracting Officer will allocate costs to the various project purposes
19 using the separable costs-remaining benefits procedure.

20 (b) For repayment purposes the reimbursable cost allocated
21 to irrigation and M&I water by the separable costs-remaining benefits
22 procedure will be combined and will hereinafter be termed the "water supply
23 allocation." Upon completion of each construction stage, and at the
24 periodic intervals specified in Subarticle 9.3(d), suballocation of the
25 water supply allocation will be made to the irrigation and M&I water
26 functions proportional to the water estimated to be used for each purpose

1 during the repayment period of each construction stage. The cost thus
2 suballocated to the irrigation function will hereinafter be termed the
3 "interest-free allocation." The cost thus suballocated to the M&I water
4 function shall be added to the cost allocated to the commercial power
5 function, plus interest during construction for both, and the sum will
6 hereinafter be termed the "interest-bearing allocation."

7 (c) During construction, simple interest at the rate of
8 3.342 percent per annum shall be charged on costs allocated to the interest-
9 bearing function as adjusted by the Secretary (i.e., net disbursements
10 reduced by contract holdbacks, revenues applied to construction cost, and
11 nonreimbursable expenses financed from construction funds). The total
12 amount of all interest thus accumulated through the construction period
13 prior to the date of completion of each construction stage shall be added to
14 and become part of the actual construction cost of each construction stage.
15 Interest during construction shall not accrue during any period in
16 which construction is deferred or postponed by the United States as a result
17 of a national emergency, as determined by the Secretary, if authority to
18 forego such interest exists or is made available to the Secretary.

19 9.2 Repayment Concepts.

20 (a) Costs suballocated to non-Indian irrigation water will
21 be paid by the subcontractors to the Contractor on the basis of their
22 ability to pay as determined by the Secretary.

23 (b) Costs allocated to commercial power and costs
24 suballocated to M&I water use shall be combined and repaid with interest at
25 a rate of 3.342 percent per annum on the unpaid balance.

26 (c) Reimbursable costs allocated to recreation and fish

1 and wildlife are anticipated to be covered by a separate contract and repaid
2 by the beneficiaries thereof.

3 (d) Repayment of costs allocated to irrigation of Indian
4 lands shall be governed by the provisions of Section 402 of the
5 Basin Project Act.

6 (e) Repayment of the project will occur by construction
7 stages, with each stage having a separate 50-year repayment schedule. Upon
8 completion of each cost allocation study referred to in
9 Subarticle 9.1(a), subsequent to the initial study associated with the
10 first construction stage, the Contractor's repayment obligation and the
11 obligation allocated to each construction stage will be adjusted based on
12 the latest cost allocation study, and the Contractor will be provided with a
13 revised repayment schedule for the project and each construction stage. The
14 Contracting Officer will adjust previous principal and interest payments
15 made by the Contractor to reflect the new repayment schedule. For each
16 year where an adjustment in payments is necessary, there will be an over or
17 underpayment which will accrue with interest at the rate of 3.342 percent
18 per annum (compounded annually) to the adjustment date. If the adjustment
19 indicates that the Contractor overpaid principal and interest, the
20 Contractor shall be entitled to a credit against its next payments to the
21 United States. Conversely, if the Contractor owes additional principal and
22 interest to the United States, such amount shall be paid to the United
23 States by the Contractor within 12 months of receipt of a statement therefor
24 from the Contracting Officer. The Contractor may use the repayment reserve
25 fund under Subarticle 10.3(b) hereof for any payment to the United States
26 required as a result of the above adjustment.

1 9.3 Contractor's Construction Cost Repayment Obligation.

2 (a) The Contractor's repayment obligation shall consist of
3 the total cost allocated to the water supply and power functions plus OM&R
4 during construction and interest during construction on costs allocated to
5 the M&I water and power functions, but shall not include costs allocated to
6 fish and wildlife and recreation, and costs associated with the delivery of
7 water to entities other than the Contractor or subcontractors. Such
8 entities shall include but not be limited to Indian tribes and councils in
9 central Arizona receiving project water and the New Mexico recipients of
10 water service from Hooker Dam or suitable alternative. The costs to be
11 excluded shall be calculated as follows:

12 (i) Costs excluded from the Contractor's repayment
13 obligation for New Mexico water service shall be
14 determined by multiplying the project costs
15 allocated to the water supply function by the ratio
16 developed by dividing the quantity of project water
17 projected to be delivered throughout the overall
18 repayment period to water users in Arizona
19 in exchange for water delivered to users
20 in New Mexico from or by means of project
21 works, by the total quantity of Colorado River
22 water projected to be delivered by the project
23 throughout the overall repayment period.

24 (ii) The amount of other project costs which shall
25 be excluded from the Contractor's repayment
26 obligation shall be determined by multiplying the

1 project costs allocated to the water supply
2 function by a ratio developed by dividing the
3 quantity of project water projected to be delivered
4 throughout the overall repayment period to entities
5 other than the Contractor, the subcontractors, and
6 those users in New Mexico to whom water has been
7 made available through the construction of
8 Hooker Dam or suitable alternative by the
9 total quantity of project water projected to be
10 delivered throughout the overall repayment period;
11 Provided, That project water projected to be
12 delivered to such users will be computed based on
13 an assumption of full development not later than
14 the year 2005.

15 (b) The costs determined under Subarticles 9.3(a)(i) and
16 (ii) above shall be subtracted from the water supply costs obtained from the
17 separable costs-remaining benefits procedure to determine the Contractor's
18 water supply costs. The Contracting Officer shall suballocate the
19 Contractor's water supply costs to each of the construction stages based on
20 the ratios obtained by dividing the allocable cost of the construction stage
21 by the allocable cost of the project (see Operation 1, Exhibit "A"). The
22 water supply costs assigned to each construction stage are then further
23 suballocated between irrigation and M&I water use in proportion to projected
24 total water deliveries to each function over the 50-year repayment period of
25 each construction stage (Operation 2, Exhibit "A"). The summarization of
26 the suballocations to each construction stage determines the total water

1 supply cost to be assigned to irrigation and M&I water use (Operation 3,
2 Exhibit "A"). To determine the Contractor's repayment obligation, the
3 Contractor's water supply suballocation to irrigation and M&I water uses,
4 and the power allocation from the separable costs-remaining benefits
5 procedure, shall each be adjusted for any revenues received by the
6 United States prior to the notice(s) of completion and for any contributions
7 received by the United States under the Plan 6 Funding Agreement for the
8 features constructed in that stage, and for the 500 cubic feet per second of
9 incremental capacity in the Granite Reef Aqueduct and pumping plants (see
10 Article 9.7) to determine the net amount of each function assigned to the
11 Contractor (Operation 4, Exhibit "A"). The Contractor's repayment
12 obligation shall be the summation of the net amount for each function.

13 (c) Once the Contractor's estimated or final repayment
14 obligation has been determined by the Contracting Officer, the obligation
15 shall be allocated to each construction stage based on the ratio obtained by
16 dividing the allocable cost of each construction stage by the allocable cost
17 of the project. Each construction stage will have a separate 50-year
18 repayment period. The repayment obligation for each stage will be divided
19 into interest-bearing and interest-free components. The interest-free
20 component shall be the amount allocable to irrigation purposes for the
21 stage. The interest-bearing component will be the amount obtained by
22 subtracting the irrigation allocation for the stage from the obligation for
23 the stage. The principal payments for each stage shall be determined by
24 applying the percentages in Subarticle 9.3(f) to the repayment obligation
25 for each stage. The total payment for each stage for any year shall be
26 equal to the principal payment plus interest at the rate of 3.342 percent

1 per annum on the unpaid interest-bearing component of the repayment
2 obligation for each stage. For the water supply system, the portion of each
3 principal payment which is made by the Contractor from irrigation revenues
4 received by the Contractor each year will be used by the United States to
5 reduce the interest-free obligation. The remaining portion of the principal
6 payments made by the Contractor each year for the water supply system will
7 be used by the United States to reduce the interest-bearing obligation, and
8 once the interest-bearing obligation has been retired, the entire principal
9 payment made by the Contractor will be applied by the United States toward
10 the interest-free obligation. For the other construction stages, the entire
11 principal payment made by the Contractor each year for such stages will be
12 applied by the United States to reduce the interest-bearing obligation
13 first, and once such obligation has been retired, to reduce the interest-
14 free obligation.

15 (d) At 7-year intervals following the determination of the
16 Contractor's repayment obligation for the water supply system, or at more
17 frequent intervals if it becomes apparent to the Contracting Officer that a
18 significant change in water use has or will occur, until such time as the
19 interest-bearing obligation for each construction stage has been repaid, the
20 Contracting Officer will re-estimate the proportions of total water
21 deliveries to irrigation and M&I water use over the 50-year repayment period
22 for each stage. At such intervals, the Contracting Officer will adjust the
23 original interest-bearing and interest-free allocation for each stage based
24 on the new estimates and recalculate all preceding interest payments.
25 Differences between amounts owed and amounts paid by the Contractor shall be
26 adjusted by the Contracting Officer, who shall apply a credit against the

1 Contractor's next payment due or notify the Contractor of the additional
2 amount due, as the case may be. All such adjustments shall include interest
3 at the rate of 3.342 percent per annum (compounded annually). Any
4 additional payments required from the Contractor shall be made within
5 12 months of the Contractor's receipt of a statement from the Contracting
6 Officer therefor. The Contractor may use the repayment reserve fund under
7 Subarticle 10.3(b) hereof for any payment to the United States required as a
8 result of the above adjustment.

9 (e) The Contracting Officer will notify the Contractor of
10 (i) its estimated repayment obligation when construction of the first
11 construction stage is substantially complete and upon completion of each
12 subsequent construction stage, and (ii) the actual repayment obligation when
13 the final construction stage has been completed, as determined by the
14 Contracting Officer. In the event that the project ultimately consists only
15 of the water supply system, New Waddell Dam, and Modified Roosevelt Dam, the
16 Contractor's actual repayment obligation shall be limited to \$2.0 billion.
17 If prior to completion of construction of such features the Contracting
18 Officer determines that the Contractor's repayment obligation for such
19 features will exceed \$2.0 billion, the Contracting Officer shall consult
20 with the Contractor and continuation of construction will be contingent upon
21 the execution of an amendatory contract to cover the increased repayment
22 obligation. If construction of any other construction stage will result in
23 an increase in the Contractor's repayment obligation by an amount equal to
24 or less than the respective amount identified in Exhibit "B," which is
25 attached hereto and made part of this contract, the Contractor's repayment
26 ceiling may, after consultation with the Contractor, be increased by the

1 Contracting Officer by an amount equal to or less than the respective amount
2 identified in Exhibit "B" by written notice thereof from the Contracting
3 Officer to the Contractor. If construction of such other construction
4 stage will result in an increase in the Contractor's repayment obligation
5 by an amount greater than the respective amount identified in Exhibit "B,"
6 the Contracting Officer shall consult with the Contractor and the
7 Contractor and the Contracting Officer shall agree upon one of the
8 following courses of action prior to initiation of construction of such
9 construction stage: (1) that additional repayment ceiling be made available
10 from other construction stages, in which event the Contractor's repayment
11 ceiling will be increased to the agreed-to amount by written notice from
12 the Contracting Officer to the Contractor; or (2) that this contract be
13 renegotiated to increase the Contractor's repayment ceiling; Provided, That
14 these courses of action shall also apply in the event that, prior to
15 completion of construction of such stage, the Contracting Officer determines
16 that the construction of such stage will result in an increase in the
17 Contractor's repayment obligation by an amount greater than the respective
18 amount identified in Exhibit "B."

19 (f) Annual percentages of the repayment obligation for each
20 construction stage shall be those set out in the following schedule or any
21 revision thereof mutually agreed upon:

<u>Repayment Year</u>	<u>Percent of Repayment Obligation (Annual)</u>
1-7	1.0
8-14	1.3
15-21	1.6
22-28	2.0
29-35	2.6
36-42	2.7
43-49	2.7
50	2.7

1 (g) In the event that the Secretary contracts for delivery
2 of non-project water under the provisions of Article 10.1, capital charges
3 associated with such delivery shall be calculated, charged, and utilized in
4 the same manner as capital charges deposited in the Development Fund
5 pursuant to Article 8.18.

6 9.4 Payment of Contractor's Construction Cost Repayment
7 Obligation.

8 (a) The Contractor shall make annual payments to the
9 United States, to be credited to the Development Fund, which shall be
10 sufficient, when combined with accruals from the other sources described in
11 Section 403(f) of the Basin Project Act, the Hoover Power Plant Act of 1984,
12 and other miscellaneous revenues, including but not limited to net wheeling
13 charges, to effect repayment of the repayment obligation for each
14 construction stage within a period of not more than 50 years beginning with
15 the year following substantial completion of each construction stage. The
16 Contractor's first payment shall be due on or before January 15 of the year
17 following the year in which the Secretary announces the substantial
18 completion of each construction stage. Annual payments thereafter shall
19 be due on or before January 15 of each following year.

20 (b) The Contractor agrees to make annual payments
21 calculated by the Secretary as follows:

22 (i) Calculate the annual principal payments required by
23 the schedule in Subarticle 9.3(f) or any revision
24 thereof for each construction stage.

25 (ii) Add to (i) the annual interest, at 3.342 percent,
26 on the unpaid balance of the interest-bearing

1 allocation for each construction stage.

2 (iii) Determine the total amount of all interest and
3 principal payments due for all construction
4 stages.

5 (iv) Subtract therefrom the revenues estimated to be
6 available from the Development Fund anticipating
7 a zero balance at the end of each year in the
8 Development Fund.

9 (v) Make adjustments for differences between estimated
10 and actual revenues for the preceding year.

11 (c) On or before each December 15, beginning with
12 December 15 of the year in which the Secretary notifies the Contractor of
13 the substantial completion of the first construction stage, the Secretary
14 will notify the Contractor of the amount of the annual payment due on the
15 following January 15, which has been determined by the Secretary on the
16 basis of the aforesaid calculation.

17 (d) The Contractor may make additional payments on the
18 repayment obligation at any time subject to such terms and conditions as may
19 be agreed upon by the Contractor and the Contracting Officer; Provided,
20 however, That all interest due is paid at the same time, whereupon
21 appropriate adjustments in the schedule of future payments will be made by
22 the Secretary, who shall as promptly as possible give the Contractor
23 written notice of the adjusted repayment schedule.

24 (e) It is understood and agreed that the Contractor shall
25 be obligated for the payments set forth in Subarticle 9.4(a) hereof and
26 that regardless of the delinquency or default in payment of any charges

1 due to the Contractor from any subcontractor, or a diminution in the water
2 supply available to the Contractor, or regardless of any other reason, the
3 Contractor shall complete repayment of each construction stage within a
4 50-year period beginning in the year following the announcement by the
5 Secretary of substantial completion of such construction stage.

6 9.5 Commercial Power Rates. The Secretary will, consistent
7 with applicable law, periodically review and provide for appropriate
8 adjustments in the rates established for the sales of power and energy,
9 revenues from which contribute to the Development Fund.

10 9.6 Other Costs Borne by the Contractor.

11 (a) In addition to the payments provided for in Article 9.4
12 hereof, and subject to the provisions of Subarticle 9.6(d) hereof, during
13 such periods as the United States operates and maintains completed
14 construction stages, the Contractor shall make advance payments for
15 OM&R costs incurred by the United States. The United States will furnish
16 the Contractor with an estimate in writing at least 6 months
17 prior to substantial completion of construction of the water supply system,
18 of the OM&R cost due from the Contractor to the end of the then current
19 year, together with an estimate of such cost for the calendar year
20 immediately following. Within a reasonable time of the receipt of said
21 estimates, as determined by the Contracting Officer, the Contractor shall
22 advance to the United States the payments for the estimated OM&R cost to the
23 end of the then current year and without further notice or demand shall on
24 December 15 of the then current year and on June 15 of the following year
25 advance to the United States in equal semiannual installments the
26 Contractor's share of the estimated cost, including supervision and

1 administrative expense for the OM&R of the water supply system. Advance
2 payments shall be made in subsequent years by the Contractor to the
3 United States on the basis of estimates to be furnished by the United States
4 on or before November 15 preceding said subsequent year and the advances of
5 said payments shall be due and payable in equal semiannual payments on the
6 following December 15 and June 15. Said OM&R costs are the total annual
7 OM&R costs of completed construction stages which are allocated to the
8 irrigation and M&I water supply functions less (i) the costs described in
9 Subarticle 9.6(c) hereof, and (ii) an amount determined by multiplying the
10 total of said annual costs by the ratio obtained by dividing the estimated
11 amount of project water projected to be delivered in the subsequent year to
12 entities other than the Contractor, the subcontractors, and those entities
13 in New Mexico to which project water will be made available from Hooker Dam
14 or suitable alternative, by the total amount of project water estimated to
15 be delivered for use in that year.

16 (b) Differences between actual OM&R costs and the estimated
17 costs shall be determined by the Contracting Officer and shall be adjusted
18 in next succeeding estimates; Provided, however, That if in the opinion of
19 the Contracting Officer the amounts advanced by the Contractor for any year
20 are likely to be insufficient to pay the above-mentioned OM&R costs during
21 such year, additional and sufficient sums of money shall be paid forthwith
22 by the Contractor to the United States upon notice thereof and demand
23 therefor by the Contracting Officer; Provided, further, That the
24 United States will give Contractor reasonable notice in advance of any such
25 deficiency.

26 (c) The Contractor's obligation to pay said OM&R costs

1 of completed construction stages will be reduced to the extent that project
2 water is made available for use in New Mexico following completion of
3 Hooker Dam or suitable alternative. Said reduction will be in the
4 proportion which the quantity of project water projected to be delivered to
5 water users in Arizona, in exchange for Gila River system waters delivered
6 to water users in New Mexico from or by means of project works, bears to the
7 total quantity of Colorado River water projected to be delivered to the
8 project that year.

9 (d) In the event that responsibility for OM&R of project
10 facilities is transferred to and assumed by the Contractor, the Contractor
11 shall be relieved of the obligation to make OM&R payments associated with
12 such facilities under Subarticle 9.6(a) of this contract. In that event,
13 the United States shall pay or provide for payment of OM&R costs associated
14 with delivery of water to entities other than the Contractor and the
15 subcontractors. Such costs shall be computed in accordance with
16 Subarticle 9.6(a) of this contract. If the Contractor does not receive
17 payment in advance for such costs, the Contractor shall have no obligation
18 to deliver such water.

19 (e) During the Hoover Dam cost-repayment period, the
20 Contractor shall pay to the United States the sum of \$0.25 for each acre-
21 foot of water pumped from Lake Havasu for miscellaneous and M&I water
22 purposes as determined by the Contracting Officer. The quantity of water
23 pumped for such purposes will be determined by the Contracting Officer at
24 the end of each calendar year and the Contractor notified of the amount due
25 by March 1 of each subsequent year. Payment shall be due on May 1 following
26 notification. Said payment shall be credited to the Colorado River Dam Fund

1 established by Section 2 of the Boulder Canyon Project Act.

2 9.7 Repayment of Costs of Excess Capacity in Granite Reef
3 Aqueduct. The costs of providing any capacity in the Granite Reef Aqueduct
4 and pumping plants in excess of 2,500 cubic feet per second shall be repaid
5 by Contractor from funds available to Arizona pursuant to the provisions of
6 Section 403(f) of the Basin Project Act, or by funds from sources other than
7 the Development Fund.

8 9.8 Ad Valorem Taxes, Assessments, Tolls, and Other Charges.
9 Within the legal limits available to it, the Contractor shall levy
10 ad valorem taxes upon the taxable property within the service area of the
11 Contractor at rates determined necessary by the Contractor to raise funds
12 which, together with the revenues from the sale of water and such financial
13 assistance from the Development Fund as the Secretary determines is
14 available therefor, are sufficient to meet the obligations of the Contractor
15 to make in full all payments to the United States on or before the date such
16 payments become due and to meet its other obligations under this contract.

17 9.9 Continuation of Payments After Project Payout. Following
18 payment to the United States of the Contractor's final payment for the last
19 construction stage, the Contractor shall continue to make annual payments to
20 the United States to be credited to the Development Fund in amounts equal to
21 the average annual principal payment for the project during the overall
22 repayment period. In the event that no augmentation project, as
23 contemplated in the Basin Project Act, has been authorized or is under
24 active consideration by the Congress at the time project construction costs
25 have been repaid in full, payments under this formula will be not required;
26 Provided, however, That payments will commence after repayment of the

1 project costs pursuant to the formula, or any adjustment thereof agreed to
2 by the parties, at such time as an augmentation project is authorized by
3 Congress and the costs thereof allocated to the Contractor are determined by
4 the Secretary.

5 9.10 Defaults.

6 (a) The Contractor shall pay a penalty on payments,
7 installments or charges which become delinquent, computed at the rate of
8 1 percent per month on the amount of such delinquent payments, installments,
9 or charges from and after the date when the same become due until paid.

10 (b) No water shall be furnished to the Contractor during
11 any period in which the Contractor may be in arrears more than 12 months in
12 the payments to the United States required by Article 9.4 hereof.

13 (c) All rights of action for breach of this contract are
14 reserved to the United States as provided by Federal law.

15 10. GENERAL PROVISIONS

16 10.1 Other Contracts. The Secretary reserves the right to
17 contract directly with other water using entities concerning water supply
18 through project facilities. In the event this occurs, the provisions of
19 Article 8.17 hereof shall be applicable.

20 10.2 Title to Project Works. Title to all water supply system
21 works and all project facilities constructed pursuant to the Basin Project
22 Act and this contract shall be and remain in the United States until
23 otherwise provided by Congress.

24 10.3 Reserve Funds.

25 (a) (i) Commencing with notice of transfer of OM&R for the
26 Granite Reef Aqueduct, including the Havasu Pumping Plant, the Contractor

1 shall accumulate and maintain an emergency OM&R reserve fund, which the
2 Contractor shall keep available to meet costs incurred during periods of
3 interruption of water service.

4 (ii) The Contractor shall accumulate the reserve fund
5 with annual deposits, including interest and dividends accruing to fund
6 balances or holdings, of not less than \$400,000 in any year in which the
7 fund balance is less than \$4,000,000. The fund shall be invested in a
8 Federally insured interest- or dividend-bearing account, or in securities
9 guaranteed by the Federal Government; Provided, That money in the reserve
10 fund shall be available within a reasonable time to meet expenses for such
11 purposes as those identified in Subarticle 10.3(a)(iv) hereof. Such annual
12 deposits and the accumulation of interest and dividends to the reserve fund
13 shall continue until \$4,000,000 is accumulated. Interest and dividends
14 accruing to fund balances shall be added to the fund in any year when the
15 fund balance is greater than \$4,000,000; Provided, That in no event shall
16 the fund be increased to an amount greater than the actual amount of fixed
17 OM&R costs for the preceding year as mutually determined by the Contractor
18 and the Contracting Officer. Any balance in the fund in excess of the
19 amount of fixed OM&R costs for the previous year shall be considered to be
20 the general funds of the Contractor and available for use as such.

21 (iii) Upon mutual agreement between the Contractor and
22 the Contracting Officer, the amount to be accumulated and maintained in the
23 reserve fund provided for in this Subarticle may be adjusted in
24 consideration of the risk and uncertainty stemming from the size and
25 complexity of the project, the size of the annual OM&R budget, additions
26 to, deletions from, or changes in project works, or OM&R costs not

1 contemplated when this contract was executed.

2 (iv) The Contractor may make expenditures from such
3 reserve fund only for meeting unforeseen and extraordinary operation and
4 maintenance costs, unusual or extraordinary repair or replacement costs, and
5 betterment costs (in situations where recurrence of severe operation and
6 maintenance problems can be avoided or eliminated). Proposed expenditures
7 from the fund shall be submitted to the Contracting Officer in writing for
8 review and written approval prior to disbursement.

9 (v) During any period in which any of the project works
10 are operated and maintained by the United States, the reserve fund shall be
11 available for like use by the United States.

12 (vi) On or before February 1 of each year, the
13 Contractor shall provide to the Contracting Officer an annual statement
14 indicating the principal and accumulated interest in the emergency OM&R
15 reserve fund as of December 31 of the preceding year.

16 (b) (i) No later than 1 year following the Contractor's
17 last construction advance under the Plan 6 Funding Agreement, the Contractor
18 shall accumulate and maintain a repayment reserve fund to help assure
19 payments to the United States under this contract.

20 (ii) The Contractor shall accumulate such reserve fund
21 with annual deposits, including interest and dividends accruing to fund
22 balances or holdings, of not less than \$4,000,000 in any year in which the
23 fund balance is less than \$40,000,000. The fund shall be invested in a
24 Federally insured interest- or dividend-bearing account, or in securities
25 guaranteed by the Federal Government; Provided, That money in the reserve
26 fund shall be available within a reasonable time to meet expenses for the

1 purpose for which it was established. Such annual deposits and the
2 accumulation of interest to the reserve fund shall continue until
3 \$40,000,000 is accumulated. Any balance in the fund in excess of
4 \$40,000,000 shall be considered to be the general funds of the Contractor
5 and available for use as such.

6 (iii) Upon mutual agreement between the Contractor and
7 the Contracting Officer, the amount to be accumulated and maintained in the
8 reserve fund provided for in this Subarticle may be adjusted.

9 (iv) Proposed expenditures from the fund shall be
10 submitted to the Contracting Officer in writing for review and written
11 approval prior to disbursement.

12 (v) On or before February 1 of each year, the
13 Contractor shall provide to the Contracting Officer an annual statement of
14 the principal and accumulated interest in the repayment reserve fund as of
15 December 31 of the preceding year.

16 10.4 Recreational Use of Water Facilities.

17 (a) The enhancement of recreational opportunities in
18 connection with the project works authorized pursuant to Title III of the
19 Basin Project Act shall be in accordance with the provisions of the Federal
20 Water Project Recreation Act, 79 Stat. 213, dated July 9, 1965, except as
21 provided in Subarticle 10.4(b) hereof.

22 (b) Recreational development at Orme Dam and Reservoir
23 shall be governed by the provisions of Section 302(d) of the Basin Project
24 Act.

25 10.5 Confirmation of Contract.

26 (a) The Contractor, after the execution of this contract,

1 shall promptly seek to secure a decree of a court of competent jurisdiction
2 of the State of Arizona confirming the execution of this contract. The
3 Contractor shall furnish the United States a certified copy of the final
4 decree, the validation proceedings, and all pertinent supporting records of
5 the court approving and confirming this contract, and decreeing and
6 adjudging it to be lawful, valid, and binding on the Contractor. This
7 contract shall not be binding on the United States or the Contractor until
8 such final decree has been entered.

9 (b) This contract shall be indivisible for purposes of
10 validation and shall not be binding on the United States or the Contractor
11 unless validated pursuant to the provisions of Subarticle 10.5(a) hereof in
12 each and all of its terms and conditions.

13 10.6 Rules, Regulations, and Determinations.

14 (a) The parties agree that the delivery of water or the use
15 of Federal facilities pursuant to this contract is subject to Reclamation
16 Law, as amended and supplemented, and the rules and regulations promulgated
17 by the Secretary of the Interior under Reclamation Law.

18 (b) The Contracting Officer, after an opportunity has
19 been offered to the Contractor for consultation, shall have the right to
20 make rules, regulations, and determinations consistent with the provisions
21 of this contract, the laws of the United States and the State of Arizona,
22 including, without limitation, rules, regulations, and determinations
23 relative to maximizing project benefits from pumping from Lake Havasu, the
24 rate and schedule of pumping therefrom and the rate and schedule of pumping
25 at the Granite Reef pumping plants, to add to or modify said rules,
26 regulations, and determinations as may be deemed proper and necessary to

1 carry out this contract, and to supply necessary details of its
2 administration which are not covered by express provisions of this contract.
3 The Contractor and each subcontractor shall observe such rules, regulations,
4 and determinations and each subcontract shall so provide.

5 (c) Where the terms of this contract provide for action
6 to be based upon the opinion or determination of either party to this
7 contract, whether or not stated to be conclusive, said terms shall not be
8 construed as permitting such action to be predicated upon arbitrary,
9 capricious, or unreasonable opinions or determinations. In the event that
10 the Contractor questions any factual determination made by the
11 Contracting Officer, the findings as to the facts shall be made by the
12 Secretary only after consultation with the Contractor and shall be
13 conclusive upon the parties.

14 10.7 Books, Records, and Reports. The Contractor shall establish
15 and maintain accounts and other books and records pertaining to
16 administration of the terms and conditions of this contract, including: the
17 Contractor's financial transactions, water supply data, project operation,
18 maintenance and replacement logs, project land and right-of-way use
19 agreements, and other matters specifically relating to this contract that
20 the Contracting Officer may require. Reports thereon shall be furnished to
21 the Contracting Officer in such form and on such date or dates as the
22 Contracting Officer may require. Subject to applicable Federal laws and
23 regulations, each party to this contract shall have the right during office
24 hours to examine and make copies of the other party's books and records
25 relating to matters covered by this contract.

26 10.8 Notices. Any notice, demand, or request authorized or

1 required by this contract shall be deemed to have been given, on behalf of
2 the Contractor, when mailed, postage prepaid, or delivered to the Regional
3 Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 61470,
4 Boulder City, Nevada 89006, and on behalf of the United States, when mailed,
5 postage prepaid, or delivered to the General Manager of the Contractor,
6 23636 North 7th Street, Phoenix, Arizona 85024. The designation of the
7 addressee or the address may be changed by notice given in the same manner
8 as provided in this article for other notices.

9 10.9 Contingent on Appropriation or Allotment of Funds. T h e
10 expenditure or advance of any money or the performance of any obligation by
11 the United States under this contract shall be contingent upon
12 appropriation or allotment of funds. Absence of appropriation or allotment
13 of funds shall not relieve the Contractor from any obligations under this
14 contract. No liability shall accrue to the United States in case funds are
15 not appropriated or allotted.

16 10.10 Changes in Contractor's Organization. While this contract
17 is in effect, no change shall be made in the Contractor's organization,
18 by exclusion of lands, by dissolution, consolidation, merger or otherwise,
19 except upon the Contracting Officer's written consent; Provided, however,
20 That approval is hereby given to the inclusion of other counties as part of
21 Contractor's service area, except, however, that the United States shall not
22 be required, under this contract, to construct project facilities to serve
23 lands within said additional counties.

24 10.11 Assignment Limited--Successors and Assigns Obligated.
25 The provisions of this contract shall apply to and bind the successors and
26 assigns of the parties hereto, but no assignment or transfer of this

1 contract or any part or interest therein shall be valid until approved in
2 writing by the Contracting Officer.

3 10.12 Judicial Remedies Not Foreclosed. Nothing herein shall
4 be construed (a) as depriving either party from pursuing and prosecuting any
5 remedy in any appropriate court of the United States or the State of Arizona
6 which would otherwise be available to such parties even though provisions
7 herein may declare that determinations or decisions of the Secretary or
8 other persons are conclusive or (b) as depriving either party of any defense
9 thereto which would otherwise be available.

10 10.13 Equal Opportunity. During the performance of this
11 contract, the Contractor agrees as follows:

12 (a) The Contractor will not discriminate against any
13 employee or applicant for employment because of race, color, religion, sex,
14 or national origin. The Contractor will take affirmative action to ensure
15 that applicants are employed, and that employees are treated during
16 employment, without regard to their race, color, religion, sex, or national
17 origin. Such action shall include, but not be limited to, the following:
18 Employment, upgrading, demotion, or transfer; recruitment or recruitment
19 advertising; layoff or termination; rates of pay or other forms of
20 compensation; and selection for training, including apprenticeship. The
21 Contractor agrees to post in conspicuous places, available to employees and
22 applicants for employment, notices to be provided by the Contracting Officer
23 setting forth the provisions of this Equal Opportunity clause.

24 (b) The Contractor will, in all solicitations or
25 advertisements for employees placed by or on behalf of the Contractor, state
26 that all qualified applicants will receive consideration for employment

1 without regard to race, color, religion, sex, or national origin.

2 (c) The Contractor will send to each labor union or
3 representative of workers with which it has a collective bargaining
4 agreement or other contract or understanding, a notice, to be provided by
5 the Contracting Officer, advising the labor union or workers' representative
6 of the Contractor's commitments under this Equal Opportunity clause, and
7 shall post copies of the notice in conspicuous places available to employees
8 and applicants for employment.

9 (d) The Contractor will comply with all provisions of
10 Executive Order No. 11246 of September 24, 1965, as amended, and of the
11 rules, regulations, and relevant orders of the Secretary of Labor.

12 (e) The Contractor shall furnish all information and
13 reports required by said amended Executive Order and by the rules,
14 regulations, and orders of the Secretary of Labor, or pursuant thereto, and
15 will permit access to its books, records, and accounts by the
16 Contracting Officer and the Secretary of Labor for purposes of investigation
17 to ascertain compliance with such rules, regulations, and orders.

18 (f) In the event of the Contractor's noncompliance with the
19 Equal Opportunity clause of this contract or with any of the said rules,
20 regulations, or orders, this contract may be canceled, terminated, or
21 suspended, in whole or in part, and the Contractor may be declared
22 ineligible for further Government contracts in accordance with procedures
23 authorized in said amended Executive Order, and such other sanctions may be
24 imposed and remedies invoked as provided in said amended Executive Order, or
25 by rule, regulation, or order of the Secretary of Labor, or as otherwise
26 provided by law.

1 (g) The Contractor will include the provisions of paragraphs
2 (a) through (g) in every subcontract or purchase order unless exempted by
3 rules, regulations, or orders of the Secretary of Labor issued pursuant to
4 Section 204 of said amended Executive Order, so that such provisions will be
5 binding upon each subcontractor or vendor. The Contractor will take such
6 action with respect to any subcontract or purchase order as the
7 Contracting Officer may direct as a means of enforcing such provisions,
8 including sanctions for noncompliance; Provided, however, That in the event
9 the Contractor becomes involved in, or is threatened with, litigation with a
10 subcontractor or vendor as a result of such direction by the
11 Contracting Officer, the Contractor may request the United States to enter
12 into such litigation to protect the interests of the United States.

13 10.14 Compliance With Civil Rights Laws and Regulations.

14 (a) The Contractor shall comply with Title VI of the
15 Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the
16 Rehabilitation Act of 1975 (Public Law 93-112, as amended), the
17 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other
18 applicable civil rights laws, as well as with their respective implementing
19 regulations and guidelines imposed by the U.S. Department of the Interior
20 and/or Bureau of Reclamation.

21 (b) These statutes require that no person in the United
22 States shall, on the grounds of race, color, national origin, handicap, or
23 age, be excluded from participation in, be denied the benefits of, or be
24 otherwise subjected to discrimination under any program or activity
25 receiving financial assistance from the Bureau of Reclamation. By executing
26 this contract, the Contractor agrees to immediately take any measures

1 necessary to implement this obligation, including permitting officials of
2 the United States to inspect premises, programs, and documents.

3 (c) The Contractor makes this agreement in consideration of
4 and for the purpose of obtaining any and all Federal grants, loans,
5 contracts, property discounts or other Federal financial assistance extended
6 after the date hereof to the Contractor by the Bureau of Reclamation,
7 including installment payments after such date on account of arrangements
8 for Federal financial assistance which were approved before such date. The
9 Contractor recognizes and agrees that such Federal assistance will be
10 extended in reliance on the representations and agreements made in this
11 article, and that the United States reserves the right to seek judicial
12 enforcement thereof.

13 10.15 Officials Not to Benefit. No Member of or Delegate to
14 Congress, Resident Commissioner or official of the Contractor shall benefit
15 from this contract other than as a water user or landowner in the same
16 manner as other water users or landowners.

17 11. STATUS OF DECEMBER 15, 1972 CONTRACT

18 Upon judicial confirmation of this contract, the December 15, 1972
19 contract entitled "Contract Between the United States and the Central
20 Arizona Water Conservation District For Delivery of Water and Repayment of
21 Costs of the Central Arizona Project" (Contract No. 14-06-W-245), shall be
22 superseded and replaced by this contract.
23
24
25
26

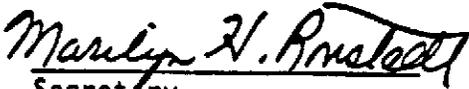
1 IN WITNESS WHEREOF, the parties hereto have caused this contract
2 to be executed the day and year first above written.

3 THE UNITED STATES OF AMERICA

4
5 By 
6 Assistant Secretary-Water and Science
7 Department of the Interior

8 CENTRAL ARIZONA WATER CONSERVATION DISTRICT

9 ATTEST:

10 
11 Secretary

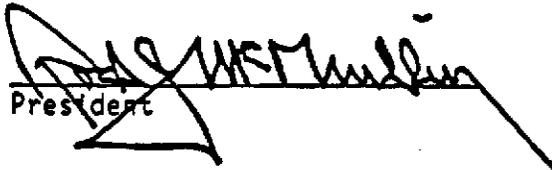
12 By 
13 President

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 1 SUBALLOCATION OF CONTRACTOR'S WATER SUPPLY COSTS TO CONSTRUCTION STAGES:

Construction Stage	Allocable Cost (\$M)	Percentage	Water Supply Cost (\$M)
Water Supply System	1,500	71%	1,280
New Waddell	300	14%	256
Cliff Alternative	100	5%	85
Tucson Term. Storage	60	3%	51
Hooker Alternative	50	2%	43
Buttes	100	5%	85
Total	2,110	100%	1,800

EXHIBIT "A"
DETERMINATION OF CAMCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 2 SUBALLOCATION OF WATER SUPPLY COST:

Construction Stage	Allocable Cost (\$M)		Water Distribution (Z)	
	Construction	IDC	Irrigation	M&I
Water Supply System	1,280	200	58Z	42Z
New Waddell	256	40	54Z	46Z
Cliff Alternative	85	10	54Z	46Z
Tucson Term. Storage	51	10	53Z	47Z
Hooker Alternative	43	10	50Z	50Z
Buttes	85	10	50Z	50Z
Total	1,800	280	100Z	

Construction Stage	Construction Cost (\$M)		IDC Cost Distribution (\$M)	
	Irrigation	M&I	Irrigation	M&I
Water Supply System	742	538	116	84
New Waddell	138	118	22	18
Cliff Alternative	46	39	5	5
Tucson Term. Storage	27	24	5	5
Hooker Alternative	21	21	5	5
Buttes	43	43	5	5
Total	1,017	783	158	122

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 3 DETERMINATION OF TOTAL WATER SUPPLY COST:

	Total Cost Distribution (\$M)		
	Irrigation	M&I	Total
Water Supply System	742	622	1,364
New Maddell	138	136	274
Cliff Alternative	46	44	90
Tucson Term. Storage	27	29	56
Hooker Alternative	21	26	47
Buttes	43	48	91
Total	1,017	905	1,922

Irrigation = Irrigation construction cost
M&I = M&I construction cost + M&I IDC

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 4 ADJUSTMENTS TO ALLOCATED COST:

	Irrigation Cost (\$M)	Interim Operations (\$M)	Local Funding (\$M)	500 CFS Granite Reef (\$M)	M&I (\$M)	Interim Operations (\$M)	Local Funding (\$M)	500 CFS Granite Reef (\$M)
Water Supply System	742	-4		33	622	10		32
New Maddell	138		-45		136		-135	
Cliff Alternative	46				44		-30	
Tucson Term. Storage	27				29			
Hooker Alternative	21				26			
Buttes	43				48			
Total	1,017	-4	-45	33	905	10	-165	32

	Power Cost (\$M)	Interim Operations (\$M)	Total (\$M)
Water Supply System	328	-100	1,663
New Maddell	61		155
Cliff Alternative	20		80
Tucson Term. Storage	12		68
Hooker Alternative	9		56
Buttes	19		110
Total	449	-100	2,132

EXHIBIT "B"
CENTRAL ARIZONA WATER CONSERVATION DISTRICT (CAWCD) REPAYMENT CEILING (Billions of Dollars)

	Remaining	Potential	Stages
Water Supply System, New Waddell, Tucson and modified Terminal Roosevelt Dams Storage	\$1.681	\$0.058	\$0.100
		\$0.035	\$0.253
		\$0.060	
		\$0.035	\$0.247
	.100	.032	.133
	.259	---	---
	---	---	---
	\$2.040	\$0.095	\$0.233
	\$2.000	\$0.082	\$0.500
			\$0.500

Amount allocable to CAWCD repayment ceiling based on October 1988 prices.

Inflation (4%) on features remaining to be completed, plus an amount for unforeseen contingencies (.82 of the inflation component)¹

Additional costs which could be allocated to CAWCD if the Gila River Indian Community does not take CAP water

Total

Rounded--

¹ Inflation calculations based on the assumption that Tucson terminal storage and the Cliff Dam alternative are completed in 1995, and that the Hooker Dam alternative and Buttes Dam are completed in 2002.