

Attachment D

C O N T R A C T

with

WEBER RIVER WATER USERS' ASSOCIATION

Providing for the construction of  
the Echo Reservoir and the Weber-  
Provo Diversion Canal.

December 16, 1926

ILR-220

DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
SALT LAKE BASIN PROJECT

CONTRACT BETWEEN THE UNITED STATES AND THE WEBER RIVER WATER USERS'  
ASSOCIATION PROVIDING FOR THE CONSTRUCTION OF THE ECHO RESERVOIR  
AND THE WEBER-PROVO DIVERSION CANAL

THIS CONTRACT, Made this 16th day of December, 1926, between the UNITED STATES OF AMERICA, hereinafter referred to as the United States, acting for this purpose through E. C. Finney, First Ass't. Secretary of the Interior, hereinafter referred to as the Secretary, under the provisions of the Act of June 17, 1902 (32 Stat., 388) and acts amendatory thereof or supplementary thereto, particularly the Warren Act of February 21, 1911 (36 Stat. 925), hereinafter collectively referred to as the Reclamation Law, and the WEBER RIVER WATER USERS' ASSOCIATION, hereinafter referred to as the Association, a corporation of the State of Utah, with its principal office at Ogden, Utah, Witnesseth:

EXPLANATORY RECITALS

2. WHEREAS, the United States proposes to construct a storage reservoir on the Weber River near Echo, in Summit County, Utah, for the impounding and storage of water for irrigation and other purposes to be known as the Echo Reservoir; and

3. WHEREAS, the United States proposes to construct a canal near Kamas, Utah, for the diversion of water from the Weber River to the Provo River, for irrigation and other purposes, to be known as the Weber-Provo Diversion Canal; and

4. WHEREAS, the construction by the United States of said Echo Reservoir and said Weber-Provo Diversion Canal as a part of the first division of the Salt Lake Basin Project, Utah, has been authorized by Congress; and

5. WHEREAS, it is the intention of the United States to build said Echo Reservoir so as to impound water to an elevation of 5560 feet above mean sea level, at which elevation the reservoir will have an estimated storage capacity of 74,000 acre feet; and

6. WHEREAS, it is the intention of the United States to build said Weber-Provo Diversion Canal so as to have a capacity of 210 second feet of water; and

7. WHEREAS, the United States has acquired for and in connection with the said Echo Reservoir and said Weber-Provo Diversion Canal certain water and water rights in and from the Weber River as represented by the following described water appropriations and filings:

*1ST FILING* Application No. 9568, dated August 22, 1924 for 74,000 acre feet of water to be stored in the Echo Reservoir, filed and recorded in the office of the State Engineer of Utah, in Book I-29 of Applications to Appropriate Water, on Pages 278 to 280.

*SECOND FILING* Application No. 9580, dated August 22, 1924 for 300 second feet of the water of Weber River, filed and recorded in the office of the State Engineer of Utah in Book I-29 of Applications to Appropriate Water on Pages 326 to 328.

8. WHEREAS, the prosecution by the United States of the construction of said Echo Reservoir and said Weber-Provo Diversion Canal depends upon the ability of the United States to secure contracts for the repayment of expenditures made or to be made in so doing; and

9. WHEREAS, the United States will have for disposal under the terms of the said Reclamation Law from said Echo Reservoir 74,000 acre feet of water or so much thereof as may be actually available from its said water supply and also, at times, certain water for diversion to the Provo River through and by means of the said Weber-Provo Diversion Canal; and

10. WHEREAS, the Association desires to secure from the United States for the use of its stockholders for irrigation purposes a water supply from said Echo Reservoir to the extent of 74,000 acre feet or so much thereof as may constitute a proportionate share of the water actually available, and in addition thereto desires to provide means for the diversion from the Weber River to the Provo River through the said Weber-Provo Diversion Canal of certain water up to but not exceeding 210 second feet as hereinafter provided in Article 13.

11. NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is hereby agreed as follows:

EXTENT TO WHICH WATER RIGHTS MAY BE SOLD

12. The United States will sell a total of 74,000 acre feet of water from said Echo Reservoir, although it is anticipated that due to drought, shortage of supply, losses by seepage and evaporation and other causes, the water supply actually available in some years for use from said Echo Reservoir may be less than 74,000 acre feet.

SALE OF WATER BY THE UNITED STATES

13. The United States will furnish to the Association:

(a) Each year during the irrigation season beginning April 1 and ending October 31, 74,000 acre feet of water or so much thereof as may be actually available as aforesaid, said water supply to be delivered in the Weber River immediately below the outlet of the Echo Reservoir as nearly as practicable at the rate of delivery ordered by the Association but not more than 2000 acre feet per day. All such water shall be delivered and used subject to and in full compliance with the provisions of said Warren Act, and in no other manner.

(b) Capacity in the said Weber-Provo Diversion Canal up to but not to exceed 210 second-feet together with the right to divert surplus water from the natural flow of the Weber River from May 1st to August 1st of each year in such amount not exceeding 210 second feet as is sufficient, when beneficially used for irrigation purposes through existing canals diverting water from the Provo River above its confluence with the South Fork of the Provo River near Vivian Park at a duty not lower than 1 second foot for 60 acres of land, to maintain the flow of the Provo River just below its confluence with the South Fork of the Provo River near Vivian Park, Utah, up to but not exceeding 510 second feet, after which, said Echo Reservoir shall be filled once each and every yearly period from November 1st to the following October 31st as against the right to divert through said Weber-Provo Diversion Canal the difference between what is actually required to maintain said flow

in the Provo River near Vivian Park, Utah, at 510 second feet as aforesaid and said 210 second feet and also as against the right to divert an additional 790 second feet from the Weber River to the Provo River which may be required for developments which may be provided by the United States in the future in connection with the Salt Lake Basin Project. \* It is expressly understood that capacity only in said Weber-Provo Diversion Canal is hereby disposed of by the United States, and that title to said Weber-Provo Diversion Canal remains in the United States, so that the United States may enlarge said canal for other possible developments which the United States may undertake in the future in connection with the Salt Lake Basin Project.

RIGHT OF WATER SUPPLY TO BE PERMANENT

14. It is understood that the Association is to acquire from the United States under the provisions of this contract and said Reclamation Law, a permanent right to the use of the water herein provided to be purchased by it.

UNITED STATES NOT LIABLE FOR WATER SHORTAGE

15. On account of drought or other causes there may occur at times a shortage in the quantity of water provided for herein, and while the United States will use all reasonable means to guard against such shortage, in no event shall any liability accrue against the United States or any of its officers, agents or employees for any damage direct or indirect arising therefrom and the payments to the United States provided for herein shall not be reduced because of any such shortage.

#### DISTRIBUTION AND USE OF WATER BY ASSOCIATION

16. The Association in the distribution of the water supply acquired hereunder, shall comply with the provisions of the Reclamation Law, particularly those of the said Warren Act, and regulations of the United States applicable thereto, and shall not furnish or deliver to any one landowner water in excess of an amount sufficient to irrigate 160 acres of land. The basis, the measure and the limit of the right of the Association to the use of the said water shall rest perpetually in the beneficial application of the same to the lands of individual land owners who are stockholders in the Association or stockholders in companies, corporations, or associations which in turn are stockholders in the Association. \* The Association shall cause said water to be put to beneficial use with due diligence in accordance with law.

#### OPERATION AND MAINTENANCE BY ASSOCIATION

17. The Association shall, at its own sole cost, operate and maintain said Echo Reservoir and said Weber-Provo Diversion Canal and appurtenant works after the construction of the same by the United States and when notified by the United States so to do, and will deliver and distribute said water or cause the same to be delivered and distributed to those entitled to use the same in compliance with the Reclamation Law and particularly the said Warren Act and the rules and regulations established by the Secretary. The Association shall maintain said Echo Reservoir and said Weber-Provo Diversion Canal and appurtenant works in proper operating conditions at all times and if it shall fail to do so, the United States may maintain or repair the same and charge the cost

thereof to the Association, which cost the Association shall promptly pay.

#### INSPECTION

18. The Secretary may cause to be made from time to time at his election a reasonable inspection of said Echo Reservoir, Weber-Provo Diversion Canal and appurtenant works, and of the books, records and papers of the Association to ascertain whether the terms of this contract are being faithfully executed by the Association. The actual expense of such inspection as found by the Secretary shall be promptly paid by the Association upon submission of bill therefor by the United States.

#### PROVIDE SECURITY

19. The Association shall provide or cause to be provided adequate security as determined by the Secretary by which the United States will be protected, secured and insured in the payment of all sums and charges herein provided to be paid to the United States by the Association: Provided: That no expenditures will be made by the United States under this contract until such security has been duly approved by the Secretary, notwithstanding prior execution of this contract by the United States.

#### TO USE ALL POWERS TO COLLECT CHARGES

20. The Association agrees that it will cause to be made and collected all necessary assessments and will use all the powers and resources of the Association, including the power of the Association to levy and collect assessments against its shares of stock and the power to withhold delivery of water, to collect and pay to the

United States all charges or sums provided in this contract in full on or before the date the same becomes due.

COMPETENT SUPERINTENDENCE REQUIRED

21. Until payment to the United States for the works and water supply herein contracted for have been completed the Association shall employ as superintendent a competent irrigation engineer who shall have experience as superintendent in the operation of irrigation works of similar character and magnitude as the Echo Reservoir and the Weber-Provo Diversion Canal and appurtenant works. The selection of such person shall be subject to the approval of the Secretary, and upon notice from the Secretary that said superintendent is or has become unsatisfactory the Association shall, as often as such notice be given, promptly terminate the employment of such unsatisfactory employee and employ one suitable to the Secretary.

PAYMENT OF CONSTRUCTION COSTS BY ASSOCIATION

22. The Association shall pay to the United States as the construction charge for said works and water supply as herein described, the cost thereof as determined and stated by the Secretary of the Interior in the statement hereinafter provided for, but not to exceed the sum of three million dollars (\$3,000,000) in twenty (20) equal annual installments, the first of which shall become due and payable on December 1st of the year in which the Secretary announces the completion of expenditures for the Echo Reservoir, Weber-Provo Diversion Canal and appurtenant works; and subsequent installments on December 1st of each year thereafter for the term above stated. It is agreed

that in case the total cost of said works is less than three million dollars (\$3,000,000) the amount to be repaid to the United States shall be proportionately reduced. It is further agreed that in case said three million dollars (\$3,000,000) is not sufficient to complete said reservoir, canal and appurtenant works, or the portion thereof needed to secure for the Association the full benefits contracted for herein, the Association nevertheless agrees to pay the United States the amount expended in the partial completion of such works.

#### PAYMENT OF OPERATION AND MAINTENANCE CHARGES TO THE UNITED STATES

23. In addition to the payment of the construction charges as provided in Article 22 the Association shall pay to the United States each year in advance such operation and maintenance charges per acre foot for such service as may be performed by the United States, and as may be fixed by the Secretary as the Association's proportionate part of the cost of the operation and maintenance of the Echo Reservoir, Weber-Provo Diversion Canal and appurtenant works, including repairs, replacements, betterments, or any of them. The total of said cost due the United States shall be set forth in an estimate to be furnished each year by the Secretary and shall be due and payable on March 1 of each year. Such estimate, for any year other than the first in which payments are made under this contract, shall take account of any surplus or deficiency resulting from the estimate for the previous year being too high or too low.

#### COMPUTATION OF COST

24. The cost of Echo Reservoir, Weber-Provo Diversion Canal and appurtenant works provided for by this contract which the Associa-

tion obligates itself to pay shall embrace all expense of whatsoever kind in connection with, growing out of, or resulting from the work described, including the cost of labor, material, equipment, investigations, engineering, legal work, superintendence, administration, overhead, rights of way, property, and damages of all kinds; and the Secretary of the Interior will furnish the Association a statement of the total amount of such cost incurred by the United States, which statement shall be accepted as final and binding on both parties hereto.

#### PENALTY FOR DELINQUENCY IN PAYMENT

25. Every installment of money required to be paid to the United States under this contract, which shall remain unpaid after the same becomes due, shall bear interest at the rate of six per cent per annum until paid.

#### REFUSAL OF WATER IN CASE OF DEFAULT

26. The United States reserves the right to refuse the delivery of water to the Association in the event of its failure to pay in advance the annual operation and maintenance charges provided to be paid in Article 23 or in the event of the default by the Association for a period of more than twelve months in the payment to the United States of any installment of the construction charges provided to be paid in Article 22. \* The Association shall refuse water service to all water users who may be in default for more than twelve months in the payment to the Association of any assessment levied by it for the purpose of raising revenues to meet the payment of construction charges due the United States from the Association under this contract or who shall fail to pay in advance to the Association any assessment

levied by the Association for the purpose of raising revenues to meet the annual operation and maintenance charges of the United States or of the Association. The provisions of this article are not exclusive and shall not in any manner prevent the United States from exercising any other remedy to enforce collection of any amount due hereunder.

**CONTRACT SUBJECT TO APPROPRIATIONS BY CONGRESS**

27. This contract is subject to appropriations being made by Congress from year to year of moneys sufficient to do the work provided for herein and no liability shall accrue against the United States by reason of such moneys not being appropriated. Should only a portion of the moneys necessary to complete the work be so provided then the amount to be repaid by the Association to the United States for such work shall be reduced to an amount equal to the amount appropriated and actually expended.

**SECRETARY MAY MAKE AND MODIFY REGULATIONS**

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

**OFFICIALS NOT TO BENEFIT**

29. No Member of or Delegate to Congress or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

SUCCESSORS AND ASSIGNS OBLIGATED

30. The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties.

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

(SEAL)

THE UNITED STATES OF AMERICA

By \_\_\_\_\_  
First Ass't. Secretary of the Interior

WEBER RIVER WATER USERS' ASSOCIATION

By \_\_\_\_\_  
A. P. Bigelow  
President

Attest:

\_\_\_\_\_  
T. R. Jones  
Secretary

(SEAL)

RESOLUTION OF THE BOARD OF DIRECTORS OF THE WEBER RIVER WATER USERS'  
ASSOCIATION

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BE, AND IT IS HEREBY RESOLVED by the BOARD OF DIRECTORS OF the WEBER RIVER WATER USERS' ASSOCIATION that the President and Secretary of said Association be, and hereby are authorized and empowered to execute and deliver to the United States a contract for the construction by the United States of the Echo Reservoir and the Weber-Provo Diversion Canal, upon such terms and conditions as set out in a form of contract submitted to the Board of Directors by the United States at this meeting

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C E R T I F I C A T E

I, T. R. JONES, Secretary of the WEBER RIVER WATER USERS' ASSOCIATION, DO HEREBY CERTIFY that the foregoing is a full, true and correct copy of a Resolution passed by the Board of Directors of the Weber River Water Users' Association at a meeting held on December 16, 1926.

I FURTHER CERTIFY that at said meeting 7 Directors were present and that 7 Directors voted in favor of said Resolution, and that no Directors voted against said Resolution.

I FURTHER CERTIFY that the total number of Directors are nine (9).

T. R. Jones

Secretary of Weber River Water  
Users' Association.

(SEAL)

RESOLUTION OF THE STOCKHOLDERS OF THE WEBER RIVER USERS' ASSOCIATION

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BE IT, AND IT IS HEREBY RESOLVED by the stockholders of the WEBER RIVER WATER USERS' ASSOCIATION, that the Board of Directors of said Association and its President and Secretary be, and hereby are authorized to enter into a contract with the United States for the construction of the Echo Reservoir and the Weber-Provo Diversion Canal upon such terms and conditions as the Board of Directors may see fit.

BE IT FURTHER RESOLVED that said Board of Directors is hereby authorized and empowered to take any and all other steps as may be necessary to consummate such contract.

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C E R T I F I C A T E

I, T. R. JONES, Secretary of the Weber River Water Users' Association, do hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a special meeting of the stockholders of the Weber River Water Users' Association, held on December 16th, A.D., 1926.

I FURTHER CERTIFY that at said meeting there was duly represented 51123 shares of stock of the Weber River Water Users' Association, and that 51123 shares of stock voted in favor of said Resolution and that no shares voted against said Resolution.

T. R. Jones

Secretary of the Weber  
River Water Users' Association

(SEAL)