

Salt River Valley Water Users' Association.

COPIES OF THE PROPOSED

CONTRACT WITH THE GOVERNMENT

AND LETTER OF THE
SECRETARY OF THE INTERIOR
RELATING TO THE

Construction of the Tonto Reservoir

BY DIRECTION OF THE BOARD OF GOVERNORS
FOR THE INFORMATION OF THE SHAREHOLDERS

1904

Section 7 of Article XIII of the Charter (the Articles of Incorporation) of the Salt River Valley Water Users' Association provides that any undertaking of the Association involving an expenditure of more than fifty thousand dollars, in any one year, shall first be authorized by the shareholders at an election to be called for that purpose.

That section reads as follows:

Section 7, Article XIII. Except for the ordinary operation, maintenance and repair, no work shall be undertaken, purchase made or indebtedness incurred or be authorized during any one year whereof the cost or amount thereof shall exceed fifty thousand dollars (\$50,000) until it shall have first been ratified by at least two-thirds of the votes cast at an election to be called for that purpose. Special elections may be called and held for such purpose under such by-laws as the Council may prescribe, not inconsistent with these Articles.

After some negotiations extending over several months of time a form of contract, satisfactory to the Government has been drawn whereby the Government, on one side, and the Association, on the other, enter into certain mutual stipulations.

This proposed contract is one which, under Section 7, above quoted, must be submitted to the shareholders.

The form of contract proposed has been approved by both the Council of the Association and by the Board of Governors, and a special election has accordingly been called for its consideration by the shareholders of the Association. The special election is called to be held on the — day of —, 1904.

The proposed contract (omitting dates, etc.) is as follows:

PROPOSED CONTRACT WITH THE SALT RIVER VALLEY
WATER USERS' ASSOCIATION.

FEBRUARY 5, 1904.

This memorandum witnesseth:

That whereas the Salt River Valley Water Users' Association is a corporation organized and existing under the laws of the Territory of Arizona for the purpose mentioned in its Articles of incorporation, a copy of which is appended to this memorandum (which is marked "Articles of Incorporation referred to in the attached memorandum, and attested by the signature of the Honorable the Secretary of the Interior of the United States of America, and of the President of the Salt River Valley Water Users' Association, for the purpose of identification") and are for every purpose of the interpretation, construction and consideration of this memorandum, and of the rights of the parties hereunder, to be

deemed, held, read and considered as if fully written out or printed herein, and deemed a part hereof.

And whereas the lands embraced within the district of lands described in Section three (3) of Article IV of said Articles of Incorporation are naturally desert and arid and incapable of proper cultivation without irrigation, and unless the waters of the Salt and Verde Rivers in Arizona and their tributaries be impounded and the flow thereof otherwise regulated and controlled will, to a greater or less extent, remain unreclaimed, unfit for habitation and uncultivated, in which condition they, or a great part thereof, are now.

And whereas the Secretary of the Interior of the United States of America contemplates the construction of certain irrigation works under the provisions of an Act of Congress entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June 17, 1902, in and across Salt River at a point about 32 miles up the course of said Salt River above the confluence of the Verde River and said Salt River, said point being near the mouth of Tonto Creek, for the purpose of there impounding the waters of said Salt River and otherwise regulating and controlling the flow of water therein, and works necessarily or conveniently incident thereto, for the use of said waters for the reclamation of arid lands along the course of said Salt River; and

Whereas the incorporators of said Salt River Valley Water Users' Association and its shareholders are, and under the provisions of its Articles of Incorporation must be, owners and occupants of lands and the appropriators of water from said Salt River and said Verde River and their respective tributaries for the irrigation thereof, and in addition thereto such incorporators, shareholders and constituents and their assigns or successors must initiate rights to the use of water from the said proposed irrigation works, to be constructed by the said Secretary of the Interior, as soon as such rights may be initiated, and thereafter complete the acquisition thereof in the manner and upon the terms and conditions to be prescribed therefor by the Secretary of the Interior, which rights shall be, and thereafter continue to be, forever appurtenant to designated lands owned by such shareholders and constituent members; and

Whereas neither the relative priority and extent of the individual appropriations of such water heretofore made by said incorporators, shareholders and constituent members, nor the proportion of the entire waters of said water courses that has been in the aggregate appropriated by them, and which are now vested rights, have been ascertained or determined, but said incorporators, shareholders and constituent mem-

bers of said Association have agreed, amongst themselves, by the terms and provisions of said articles if incorporation, upon the rules and principles by and upon which the relative priority and the extent of their several appropriations and vested rights to the use of such waters shall be determined.

1. Now, therefore, if the said Secretary of the Interior shall authorize and shall cause the construction of said irrigation works, then in the determination of the relative rights of the shareholders of said Association, and of their respective rights to the use of water acquired from the Government under said act of Congress, the rules and principles set out in said articles of incorporation, for such determination, shall be deemed the established rules and principles for that purpose.

2. That only those who are, or who may become, members of said Association, under the provisions of its Articles of Incorporation, shall be accepted as entrymen or applicants for rights to the use of water impounded, developed, or the supply of which is or may be regulated or controlled by said proposed irrigation works.

3 That the aggregate amount of such rights to be issued shall, in no event, exceed the number of acres of land capable of irrigation by the total amount of water available for the purpose, being (1) the amount now appropriated by the shareholders of said Association; and (2) the amount to be impounded and developed in excess of the water now appropriated. The Secretary of the Interior shall determine the number of acres so capable of such irrigation as aforesaid, his determination to be made upon due and expert consideration of all available data, and to be based upon and measured and limited by the beneficial use of water.

4. That the payments for the reservoir rights to be issued to the shareholders of said Association, under the provisions of said act of Congress, shall be divided into not less than ten equal annual payments, the first whereof shall be payable at the time of the completion of said proposed reservoir, or within a reasonable time thereafter, and after due notice thereof by the Secretary of the Interior to the Association. The cost of said proposed irrigation works shall be apportioned equally per acre among those acquiring such rights.

5. The said Salt River Valley Water Users' Association agrees that it will promptly collect or require prompt payment in such manner as the Secretary of the Interior may direct, and hereby guarantees the payments for that part of the cost of the irrigation works, which shall be apportioned by the Secretary of the Interior to its shareholders, and promptly pay the sums collected by it to the Receiver of the local land office for the district in which said lands are situate; that it will promptly employ the means provided and authorized by the said Articles of Incorporation for the enforcement of such collections, and will

not change, alter or amend its Articles of incorporation in any manner whereby such means of collection, or the lien given to it by the shareholders to secure the payment thereof, or of any assessments contemplated or authorized thereby, shall be impaired, diminished, or rendered less effective, without the consent of the Secretary of the Interior.

6. The United States shall in no manner be responsible for the sums collected by said Association until they have been paid into the hands of the receiver of the local land office, as provided by the law, and in accordance with such regulations as may be prescribed by the Secretary of the Interior.

7. That for the purpose of enforcing said collections, the Association will adopt and enforce proper By-Laws, subject to the approval of the Secretary of the Interior, and not change them so as to in anywise impair their efficiency for said purpose, and will otherwise do any and all things it is authorized and empowered to do in the premises.

8. That the Association will adopt and enforce such rules and regulations as it is authorized by its Articles of Incorporation to adopt and enforce, concerning the use of water by its shareholders and concerning the administration of the affairs of the Association, to effectually carry out and promote the purposes of its organization, within the provisions of said Articles of Incorporation, which rules and regulations shall be subject to the approval of the Secretary of the Interior. That if the Association fail to make and adopt such rules and regulations, then the Secretary of the Interior may prescribe them; but in such event it is understood that the Secretary of the Interior shall impose no rule or regulation interfering with any vested right of the shareholders of the Association as defined or modified by said Articles of Incorporation.

9. Persons who are not now members of the Association, but who may be the owners or occupants of land within the Reservoir District described in section 3 of Article IV, or of added lands provided for in that section and to whom rights to the use of water, from the proposed reservoir or irrigation works, may be issued, may, at the designation of the Secretary of the Interior, become members of the Association by subscribing to the stock thereof, and upon the compliance with the other conditions prescribed for such membership.

10. It is understood that in all the relations between the Government and this Association and the members of the Association, the rights of the members of the Association are to be defined and determined and enjoyed by and under the provisions of the said act of Congress and of other acts of Congress on the subject of the acquisition and enjoyment of the rights to use water, and by the laws of Arizona where not inconsistent therewith, where such rights have vested, modi-

fied, if modified at all, by the provisions of the Articles of Incorporation of said Association.

11. Nothing contained in this memorandum, or to be implied from the fact of its execution, shall be construed, held or deemed to be an approval by the Secretary of the Interior, nor an adoption by him, of the Articles of Incorporation of said Association, in all their details as the form of organization of water users contemplated and authorized by Section 6 of the said Act of Congress of June 17th, 1902; but such approval and adoption is expressly reserved until the conditions authorizing such approval and adoption prescribed in said act shall have arisen. And when the Secretary of the Interior shall make, approve, and promulgate rules and regulations for the administration of the water to be supplied from said proposed irrigation works, such rules and regulations, and such modifications thereof as the Secretary may, from time to time, approve and promulgate, shall be deemed and held to be obligatory upon this Association as fully and completely, and to every intent and purpose, as if they were now made, approved, promulgated and written out in full in this memorandum, and are to be read and construed as if so done.

(Testimonium Clause.)

The Secretary of the Interior has in a letter hereto subjoined, signified his approval of the form of the contract, and states that such a contract, if ratified by the shareholders, will be accepted by the Interior Department.

The letter of the Secretary of the Interior is addressed to the Director of the Geological Survey, and is as follows:

WASHINGTON, D. C., February 25, 1904.

To the Director of the Geological Survey:

Sir: With your letter of February 20, 1904, you transmit, with accompanying papers, the draft of a proposed agreement to be entered into by the Salt River Valley Water Users Association, a corporation organized under the laws of the Territory of Arizona, and the Secretary of the Interior acting for and in behalf of the United States under the powers conferred by the act of June 17, 1902 (32 Stat., 388), stipulating as to the rules and principles that shall govern the distribution and use of the water that may be stored by the reservoir now in course of construction, upon the Salt River, near Tonto Creek, in the Territory of Arizona.

The proposed stipulation between the two contracting parties is prompted by the following conditions. The Salt River reservoir is being constructed under authority of the act of June 17, 1902, for the purpose of impounding and conserving the waters that flow from the water

shed tributary to the Salt River Valley, for the irrigation and reclamation of arid lands. The territory, or valley, that will be susceptible of irrigation from that source embrace the same valley or territory designated in Section 3 of Article 4 of the Articles of Incorporation of the said Association as the "Salt River Reservoir District." It is alleged that the Association is composed of owners of sufficient land in said district to utilize the water that may be stored in the proposed reservoir, who have, by priority of appropriation acquired vested rights, to the use of all the waters normally flowing through the natural channels of the rivers fed from substantially the same sources as the proposed reservoir will be, which rights are recognized and protected by the 8th section of the act of June 17, 1902. Unless some agreement or understanding as to the distribution of all the waters made available by means of the reservoir can be arrived at, so that its use can be made uniform by one system, a conflict between the users of the increased supply and the owners of the vested right in the natural flow of the streams would seem to be inevitable.

The rights of the Association and of the individual members thereof, to the use of water impounded by said reservoir, including the increased, as well as the present available supply, are to be governed and controlled by the provisions of the act of June 17, 1902. Said act must necessarily control in every particular the action of the Secretary of the Interior, not only as to the construction of the works, but also as to the terms and conditions upon which use of the water will be allowed, and as to the management, maintenance and operation of the works. It does not appear, however, that the draft of the proposed agreement contains anything that is repugnant to the act, or that is not fully authorized by the letter and spirit thereof. The practical result of the proposed agreement will be the employment of the association as the agency by which the Secretary will be enabled to carry into effect the purposes of the act. This plan, it is believed, will secure the most economical distribution of the water upon the lands that can profitably be benefited thereby, will avoid conflicts that might otherwise arise in the distribution of the water, will be most effective in preventing any interference with vested rights that have heretofore been acquired, will equitably distribute the cost of construction, maintenance and operation of the works, and will assure the government reimbursement of all money expended in and upon the project.

It seems clear that the conservation of the best interests of all concerned justifies the Department in recognizing this Association as the representative of the individual owners of water rights in said district, and that the tentative propositions submitted are sufficient to protect all interests. If an agreement embodying such propositions shall be

adopted by the Association and submitted to the Department, it will be accepted.

Any agreement submitted should, however, be accompanied by a certified copy of Articles of Incorporation.

The papers are returned herewith. Very respectfully,
(Signed) E. A. HITCHCOCK, Secretary.

This pamphlet is presented to the shareholders in order that they may have full knowledge of the exact terms of the proposed contract.

It will be noted that the proposed contract embodies the principles concerning the acquisition, nature, extent and manner of enjoyment of the rights to the use of water, and as well the general principles of administration set out in our charter, governing our Association.

They may be briefly summarized to be:—

1. The priority of right of the use of water, by reason of priority of appropriation, to be applied to present vested rights.

2. The permanent appurtenance of all rights to the use of water to the lands for which they were appropriated or acquired, applicable to vested as well as to subsequently acquired rights.

3. That the basis of an appropriation of water for irrigation is the ownership of land (or occupancy of land under the Government by an entryman in process of acquiring title).

4. That the beneficial use shall be the measure and limit of the right.

5. Equality in the apportionment of the cost, both of the construction of the Government works and of maintenance and operation, on all water users in proportion to the acreage held by them respectively.

6. The centralization of powers of the Association to enforce these principles.

7. That all beneficiaries of the Government shall be subjected to these principles.

The payments by the shareholders for the reservoir rights shall be divided into ten equal payments.

The Association acts as the agency for the collection of these payments and guarantees them.

Persons who are not now members of the Association may become such on the designation of the Secretary of the Interior.

Any regulations concerning the administration of the water may be adopted or amended to accord with the requirements of the Government, provided that such regulations shall in no event impair vested rights as defined in our charter.

By Order of the Board of Governors,
SALT RIVER VALLEY WATER USERS' ASSOCIATION.