

CONTRACT NO. DA-04-167-CIVENG-66-95

CONTRACT

CONTRACTOR:

Yuba County Water Agency
Marysville, California

CONTRACT FOR:

Use of Harry L. Englebright Dam
and Reservoir for Generation of
Power, New Narrows Powerplant

LOCATION:

Near Smartville, California

This contract is authorized by Public Law 716, 75th Congress,
3rd Session, approved 25 June 1938 (52 Stat. 1040).

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THIS CONTRACT, made this 14th day of February 1966, between the United States of America, represented by the Contracting Officer, Secretary of the California Debris Commission, an instrumentality of the United States, (hereinafter called the "Government"), and the Yuba County Water Agency, (hereinafter referred to as the "Agency"), a political subdivision of the State of California, duly organized, existing, and acting pursuant to the laws thereof, with its principal place of business in Marysville, California.

WITNESSETH, THAT:

WHEREAS, in accordance with authority granted by the River and Harbor Act of 30 August 1935 (P. L. 409, 74th Congress, 1st Session, 49 Stat. p. 1028-1049) the Government has constructed a dam to create a debris restraining reservoir on the Yuba River, State of California, known as Harry L. Englebright Dam and Reservoir, which dam is located approximately three miles northeasterly of the town of Smartville, California; and

WHEREAS, pursuant to Public Law 716, 75th Congress, 3rd Session, approved 25 June 1938, the Secretary of the Army is authorized to enter into contracts for storage of water in debris control reservoirs for power development upon such conditions of delivery, use, and payment as he shall approve; and

WHEREAS, the Agency ^{intends to R.P.} ~~has~~ initiated construction of the Yuba River Development Project, and desires to construct a new powerplant on the Yuba River downstream from the Harry L. Englebright Dam; and

WHEREAS, the Agency has received "Order Issuing License," (Project No. 2246 dated 16 May 1963 as modified on 27 December 1963), from the Federal Power Commission, which license grants the Agency authority to construct a power pressure tunnel designated as the New Narrows Power Tunnel, said tunnel to extend about 400 feet from an intake structure on the right bank of Yuba River immediately upstream from existing Harry L. Englebright Dam to the head of a 295-foot long steel penstock of the New Narrows Powerplant, to be located on the right bank of the Yuba River; and

WHEREAS, Article 47 of the Federal Power Commission license, hereinabove referred to, provides that the Agency shall enter into an contractual agreement with the Government for repayment for use of Harry L. Englebright Dam and Reservoir for power purposes; and

WHEREAS, the Agency now stands ready to commence construction of the above referenced intake tunnel and powerplant;

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

1. SCOPE. To accomplish the objectives hereinabove set forth, the Agency and the Government mutually agree to the following terms and conditions:

a. The Agency at its own expense shall construct the intake works, tunnel, powerplant, access roads and appurtenances as delineated on Agency's Site Plan Drawing Nos. YE-10-201 and 202, dated 30 June 1964, (Exhibit "A" attached hereto and made part hereof), and Agency agrees to maintain and operate the project works at its own expense.

b. The Agency agrees that if at some future time it finds it necessary to modify the intake structure to permit continued operation of the powerplant, such modification will be accomplished at the Agency's expense.

c. The Agency agrees it will be pecuniarily responsible to the Government for any structural damage to Harry L. Englebright Dam incurred as a result of construction of New Narrows Power Facilities.

d. The Agency agrees that the Harry L. Englebright Dam and Reservoir was constructed primarily for debris control

and that the Government gives the Agency no guarantee or assurance as to whether debris storage will interfere with diversion from the reservoir of water for the powerplant. To this end, the Agency recognizes that its right to water usage is subservient to the debris control function of said reservoir.

e. The Agency acknowledges that the Pacific Gas and Electric Company has a contract with the Government for the storage of water in the Harry L. Englebright Dam and Reservoir between elevations 450 and 527, subject to the condition that the space is not required for the storage of debris. The Agency covenants and agrees that its right to use the Harry L. Englebright Dam and Reservoir is also subservient to the rights of the Pacific Gas and Electric Company to use the storage space in the reservoir within the limits hereinabove specified.

f. Subject to the agreed restrictions set forth in paragraphs "b," "d," and "e" above, and in consideration of the payment to be made as hereinafter specified, the Government hereby grants the Agency use of Harry L. Englebright Dam and Reservoir for diversion of water for the New Narrows Powerplant. The Government covenants and agrees that ^{to} ~~the~~ effect diversion of water, the Agency is authorized to construct the intake facilities, tunnel, powerplant and necessary appurtenances as authorized by

"Order Issuing License" (Project No. 2246, dated 16 May 1963)
from the Federal Power Commission.

g. The Government agrees to furnish or cause to be furnished to the Agency a right-of-entry permit for the purpose of constructing the project works authorized by the Federal Power Commission, "Order Issuing License" Project No. 2246, dated 16 May 1963, as modified 27 December 1963. Upon satisfactory completion of construction, the Government will furnish or cause to be furnished the Agency, subject to approval of the Secretary of the Army, necessary easements for the intake facilities, tunnel, access roads, and necessary appurtenances, including rights of ingress and egress, for operation and maintenance, to the extent the facilities of the Agency traverse property owned by the Government. The Agency agrees to furnish the Government an accurate legal description of the Government property traversed by its facilities for use in preparation of the easement hereinabove referred to.

2. PAYMENT. The Agency agrees to pay the Government \$100,000 annually during the term of this contract, commencing with the date its power plant is placed in operation, as determined by the Federal Power Commission; payment for each calendar year or fraction thereof is due within thirty (30) days after expiration thereof.

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All payments by the Agency shall be made to the Sacramento District, Corps of Engineers, Sacramento, California, by check, money order, or bank draft, payable to the Treasurer of the United States. Upon every installment of money required to be paid by the Agency to the Government which shall remain unpaid after the same shall become due and payable, the Agency shall pay the Government as liquidated damages one-half (½) of one per cent of the amount of such delinquent installment for each month in which each such installment is delinquent. Provided, however, that annual payments shall cease in the event the license issued the Agency shall be terminated by the Federal Power Commission.

3. TERM OF CONTRACT. The term of this contract shall commence the date the Agency places its power plant in operation, as determined by the Federal Power Commission, and extend throughout the term of said license (Federal Power Commission No. 2246, as modified, 27 December 1963), and may be extended upon such conditions and with such provisions as may be agreed upon by the parties hereto, coincident with and for the same term as any new license issued to the Agency pursuant to Title 16, U. S. Code, Section 808; provided, that if the Federal Power Commission under the provisions of Section 808 issues an annual

license from year to year, this contract shall be extended without change for the same annual periods as said annual license, until the property either is taken over by the United States or a new license is issued pursuant to the above cited Section; and provided further, that such yearly extensions shall in no event continue this contract beyond fifty (50) years from the date of beginning as specified above.

4. PLANS AND SPECIFICATIONS. The Agency shall submit to the Government for review, the plans and specifications for such construction features as affect the existing Harry L. Englebright Dam. All aspects of such features determined by the Government as detrimental to the safety of said dam will be modified by the Agency prior to initiating construction thereof.

5. OWNERSHIP AND PHYSICAL OPERATIONS. Title to the new intake works, tunnel, powerplant, access roads and appurtenances shall be and remain in the name of the Agency. Any and all physical operations with respect to such facilities shall be performed by the Agency.

6. RELEASE. The Agency shall hold and save the United States, including its officers, agents, and employees harmless from liability of any nature or kind, for or on account of any claim for damages which may be filed or asserted as a result of

the construction, operation and maintenance performed by the Agency pursuant to Clause 1 above.

7. GRATUITIES.

a. The Government may, by written notice to the Agency, terminate the right of the Agency to proceed under this contract if it is found, after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Agency, or any agent or representative of the Agency, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract; provided that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

b. In the event this contract is terminated as provided in foregoing paragraph "a" hereof, the Government shall be entitled

(i) to pursue the same remedies against the Agency as it could pursue in the event of a breach of the contract by the Agency, and

(ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Agency in providing any such gratuities to any such officer or employee.

c. The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

8. OFFICIALS NOT TO BENEFIT. 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; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

9. COVENANT AGAINST CONTINGENT FEES. The Agency warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established

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commercial or selling agencies maintained by the Agency for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

10. EQUAL OPPORTUNITY (APR. 1964).

The following clause is applicable unless this contract is exempt under the rules and regulations of the President's Committee on Equal Employment Opportunity (41 C.F.R. Chapter 60). Exemptions include contracts and subcontracts (i) not exceeding \$10,000, (ii) not exceeding \$100,000 for standard commercial supplies or raw materials, and (iii) under which work is performed outside the United States and no recruitment of workers within the United States is involved. During the performance of this contract, the Agency agrees as follows:

a. The Agency will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Agency will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race,

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creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Agency agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

b. The Agency will, in all solicitations or advertisements for employees placed by or on behalf of the Agency, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

c. The Agency will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Agency Contracting Officer, advising the said labor union of workers' representative of the Agency's commitments under this nondiscrimination clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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d. The Agency will comply with all provisions of Executive Order No. 10925 of March 6, 1961, as amended, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

e. The Agency will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, as amended, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the Agency's noncompliance with the nondiscrimination clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Agency may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

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g. The Agency will include the provisions of paragraphs "a" thru "g" in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order No. 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor.* The Agency will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Agency becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Agency may request the United States to enter into such litigation to protect the interest of the United States.

*Unless otherwise provided, the "Equal Opportunity" clause is not required to be inserted in subcontracts below the second tier, except for subcontracts involving the performance of "Construction work" at the "Site of construction" (as those terms are defined in the Committee's rules and regulations) in which case the clause must be inserted in all such subcontracts. Subcontracts may incorporate by reference the "Equal Opportunity" clause.

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NOTE: Equal Opportunity Clause is amended by deleting references to the President's Committee on Equal Employment Opportunity, Executive Order 10925 of March 6, 1961, as amended, and Section 303 of Executive Order No. 10925 of March 6, 1961, as amended, and substituting therefor the Secretary of Labor, Executive Order No. 11246 of September 24, 1965, and Section 204 of Executive Order 11246 of September 24, 1965, respectively.

The following additional footnote is added to the clause: "In accordance with regulations of the Secretary of Labor, the rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive Orders superseded by Executive Order 11246, shall, to the extent that they are inconsistent with Executive Order 11246, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of Executive Order 11246."

11. APPROVAL. This contract shall be subject to approval by the Secretary of the Army upon the recommendations of the President, California Debris Commission and the Chief of Engineers.

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IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

Approval recommended:
E. L. Wilhoit, Jr.
E. L. WILHOYT, JR.
Brigadier General, U.S. Army
President, California
Debris Commission

THE CALIFORNIA DEBRIS COMMISSION
By *Robert E. Mathe*
ROBERT E. MATHE
Colonel, CE
District Engineer
Sacramento District
Corps of Engineers
Secretary, California
Debris Commission
Contracting Officer

Approved MAY 13 1965 19

Stanley R. Rosen
Secretary of the Army

Colin H. Macfadden
523 Washington Sq Marysville
(Address)

YUBA COUNTY WATER AGENCY
By *Carl Olson*

Viola Brown
2230 Buller Marysville
(Address)

and
By *N. Mitchell*
Acting Secretary

On motion of Director Harvey
duly seconded by Director Dean,
the following Resolution was adopted

RESOLUTION NO. 66-4

RESOLUTION APPROVING AGREEMENT BETWEEN THE YUBA COUNTY WATER AGENCY AND
THE SECRETARY OF THE ARMY OF THE UNITED STATES FOR USE OF HARRY L.
ENGLEBRIGHT DAM AND RESERVOIR FOR GENERATION OF POWER - NEW NARROWS POWER
PLANT, AND AUTHORIZING CHAIRMAN TO EXECUTE SAME.

BE IT RESOLVED by the Board of Directors of the Yuba County Water
Agency that that certain agreement by and between the Secretary of the
Army of the United States, represented by the California Debris Commission
and the Yuba County Water Agency, be, and the same is, hereby approved
and the Chairman of this Board is hereby authorized and directed to
execute said agreement.

BE IT FURTHER RESOLVED that the Secretary of this Board be and she
is hereby instructed and directed to transmit a certified copy of this
Resolution, along with the executed copy of the agreement, to the
California Debris Commission.

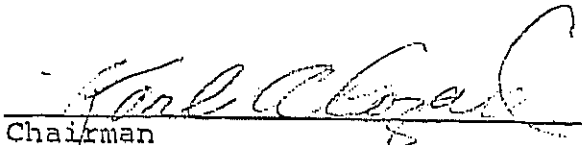
PASSED AND ADOPTED this 14th day of February, 1966, by the
following vote:

AYES: DIRECTORS COUPE, COZAD, DEAN, HARVEY AND ROSE

NOES: NONE

ABSENT: NONE


Secretary (Acting)


Chairman