

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE  
OF MONTANA, IN AND FOR THE COUNTY OF LAKE.

IN THE MATTER OF THE PETITION )  
OF THE BOARD OF COMMISSIONERS )  
OF MISSION IRRIGATION DISTRICT )  
TO DETERMINE AND CONFIRM THE )  
VALIDITY OF THE PROCEEDINGS )  
HAD RELATIVE TO THE EXECUTION )  
OF THE AMENDATORY REPAYMENT )  
CONTRACT BETWEEN THE UNITED )  
STATES OF AMERICA AND THE )  
MISSION IRRIGATION DISTRICT. )

FILED MAY 17 1951  
JAMES HARRERT, Clerk District Court  
By Malcolm E. V. V. V. Deputy  
CASE No. 9884

DECREE

This matter came on regularly to be heard on the 15th. day of May, 1951, before the Honorable Albert Besancon, sitting without a jury. The petitioners were represented by their counsel, Edward T. Dussault, and certain individual landowner petitioners by their counsel, Lloyd Wallace. No person, either before the date of hearing or at the time thereof, filed any demurrer or answer to the petition, but two landowners, Sidney Strong, and Louis Cottrell, appeared personally, without counsel, at the hearing to contest the granting of the prayer of said petition, and a withdrawal petition containing 14 signatures was filed at said hearing, wherein the landowners therein requested that their names be withdrawn from the original petition filed with the Board of Commissioners.

Thereupon evidence, both oral and documentary, in support of the petition, and in opposition thereto, was introduced, and the Court being now fully advised in the premises, finds as follows:

I.

That more than sixty (60) per cent in number and acreage of

RECORDED

*Judgment*  
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*Rec'd*

the holders of title or evidence of title to the lands included within the District have signed a petition requesting that the Board of Commissioners execute the Amendatory Repayment Contract between the District and the United States.

## II.

The Court, after an examination of the notices given, finds that notice was given in all respects as required by law, and that the Court has jurisdiction to examine and determine the regularity, legality and validity of the proceedings preliminary and relative to the execution of the Amendatory Repayment Contract attached to the petition.

## III.

The Court finds that at all of the times herein mentioned A. J. Ribbert, W. K. Phillips and Robert Strong, were duly elected, qualified and acting Commissioners of the Mission Irrigation District, a public corporation of the State of Montana, and that said petitioners constitute the entire Board of Commissioners of said District.

## IV.

The Court finds that the said Mission Irrigation District at all of the times hereinafter mentioned has been, and now is, duly created, established and organized as an irrigation district under the laws of the State of Montana, and that theretofore and on the 26th day of August, 1926, the decree and order of the abovenamed Court was duly given, made and entered establishing the said district and creating and organizing the same, and that since said date the said irrigation district has duly functioned and acted as such.

V.

The Court finds that on the 18th day of April, 1951, a petition addressed to the Board of Commissioners of said Mission Irrigation District was duly filed with the Secretary of said Board of Commissioners, petitioning and authorizing and requesting the said Board of Commissioners to execute the amendatory repayment contract between the Mission Irrigation District and the United States of America, the form of which contract was approved by the Department of the Interior on September 15, 1949, and by the Board of Commissioners on April 11, 1951, and which contract is designed to put into effect the provisions of the Act of May 25, 1948, (Public Law 554, 80th Congress), which law, when put into effect by the execution of said contract, provides for the continuation of construction and the operation and maintenance, by the United States, of the power and irrigation systems of the Flathead Indian Irrigation Project, and for the continued assumption by the district of certain indebtedness on account of said project, and for the repayment to the United States of operation and maintenance and construction costs expended by the United States upon said project for the benefit of district lands. That said petition was duly signed by more than sixty per cent in number and acreage of the holders of title or evidence of title to the lands included within said district, and said petition had attached thereto affidavits duly verifying the signatures contained in and appended to said petition.

## VI.

That thereafter, and on the 18th day of April, 1951, the said Board of Commissioners of Mission Irrigation District, in regular meeting duly assembled, duly adopted a resolution authorizing and directing the Board of Commissioners of Mission Irrigation to execute said contract between the United States and the Mission Irrigation District as specified in the aforesaid petition, and providing for the levy of a special tax or assessment as provided by law, on all the lands in the district for the irrigation and benefit of which said district was organized, and said contract is proposed, to be made sufficient in amount to pay all amounts to be paid to the United States under said contract between the Mission Irrigation District and the United States, and which said resolution further provided for the confirmation of all proceedings had in connection therewith in the above named Court as provided by law.


## VII.

That the office of said Board of Commissioners, and all of the lands within said irrigation district, are situated and located in the said County of Lake, and within the judicial district aforesaid.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, and this does ORDER, ADJUDGE AND DECREE, that the proceedings of the Board of Commissioners of Mission Irrigation District had preliminary and relative to the execution of the amendatory repayment contract between the Mission Irrigation District and the United States of America, a copy of which is annexed hereto, and marked Exhibit "A",

are, and were in all respects regular, legal and valid, and IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the acts of the said Board of Commissioners of said Mission Irrigation District, and resolution of said Board of Commissioners directing the execution of said amendatory repayment contract are in all respects ratified, approved and confirmed; and IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the levy of a special tax or assessment upon all irrigable lands included within said district, and all lands subsequently to be included, which are chargeable under the provisions of the laws of the United States and the State of Montana for the purpose of making all payments due, or to become due, the United States under said amendatory repayment contract, is hereby declared to be regular, legal and valid, and is in all respects ratified, approved and confirmed.

DONE IN OPEN COURT this 15<sup>th</sup> day of May, 1951.

  
Judge.

**EXHIBIT "A"**

AMENDATORY REPAYMENT CONTRACT

Mission Irrigation District

Flathead Indian Irrigation Project

This amendatory contract, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in pursuance of the Act of April 23, 1904 (33 Stat. 302), and acts amendatory thereof or supplementary thereto, and especially the Act of May 25, 1948 (Public Law 554-80th Congress), by and between the United States of America (hereinafter called the United States), acting by and through the Secretary of the Interior, and the Mission Irrigation District (hereinafter called the District), a public corporation duly organized and existing under the laws of the State of Montana, their respective successors and assigns, Witnesseth:

1. WHEREAS, in pursuance of said Act of April 23, 1904, and acts amendatory thereof or supplementary thereto, the parties to this amendatory contract have entered into a repayment contract (hereinafter called the original repayment contract), executed by the District as of the 9th day of January, 1931, and by the United States as of the 21st day of April, 1931, with respect to certain portions of the lands, costs, charges and benefits of the Flathead Indian Irrigation Project (hereinafter called the project); and have entered into a supplemental contract (hereinafter called the first supplemental contract), executed by the District as of the 2d day of June, 1934, and by the United States as of the 23d day of July, 1934, which modified certain provisions of the original repayment contract; and have entered into another

supplemental contract (hereinafter called the second supplemental contract), executed by the District as of the 6th day of June, 1936, and by the United States as of the 26th day of August, 1936, which also modified certain provisions of the original repayment contract.

2. 'WHEREAS, said Act of May 25, 1948, entitled "An Act To provide for adjustment of irrigation charges on the Flathead Indian irrigation project, Montana, and for other purposes," provides as follows:

"That the repayment to the United States of all reimbursable costs heretofore or hereafter incurred for the construction of the irrigation and power systems of the Flathead Indian irrigation project in Montana (hereinafter called the project), including such operation and maintenance costs as have been covered into construction costs under the Act of March 7, 1928 (45 Stat. 200,212-213), and supplemental Acts, and including the unpaid operation and maintenance costs for the irrigation seasons of 1926 and 1927 which are hereby covered into construction costs, shall be accomplished as prescribed by this Act, notwithstanding any provision of law to the contrary.

"Sec. 2. (a) All costs heretofore or hereafter incurred for the construction of the irrigation system shall be allocated to the Mission Valley, Camas, and Jocko divisions of the project in proportion to the amount of such costs incurred for the respective benefit of each of these divisions.

(b) The net revenues heretofore and hereafter accumulated from the power system shall be determined by deducting from the gross revenues the expenses of operating and maintaining the power system, and the funds necessary to provide for the creation and maintenance of appropriate reserves in accordance with section 3 of the Act of August 7, 1946 (60 Stat. 895; 31 U.S.C., sec. 725s-3).

(c) The deferred obligation established by the Act of May 10, 1926 (44 Stat., 453,464-466), for repayment of the per acre costs of the Camas division in excess of the per acre costs of the Mission Valley division shall be determined on the basis of the costs heretofore incurred for the construction of those divisions, and shall be liquidated from the net revenues heretofore accumulated from the power system.

(d) The remainder of the net revenues heretofore accumulated from the power system shall be applied to reduce

the reimbursable costs heretofore incurred for the construction of the power system, and the reimbursable costs heretofore incurred for the construction of the irrigation system (exclusive of the deferred obligation for the excess costs of the Camas division) as allocated among the several divisions pursuant to subsection (a) of this section, in proportion to the respective amounts of each of the foregoing categories of costs.

(e) The reimbursable costs heretofore incurred for the construction of the irrigation system of each division of the project and not repaid through the credits provided for in subsections (c) and (d) of this subsection shall be scheduled for repayment in annual installments of approximately equal amount, in a manner which will provide for liquidation of such costs over a period of fifty years from January 1, 1950. The reimbursable costs hereafter incurred for the construction of the irrigation system shall be added to the schedule of repayments established pursuant to this subsection by increasing the amount or the number, or both, of the annual installments maturing after the incurrence of such costs, in a manner which will provide for their liquidation within a period not exceeding the useful life of the works involved, or not exceeding fifty years from the time when the additional costs are incurred, whichever period is the lesser. Each annual installment shall be distributed over all irrigable lands within the division on an equal per acre basis, and the costs so charged against any parcel of lands within the division shall constitute a first lien thereon under the Act of May 10, 1926 (44 Stat. 453, 464-466). Upon the maturity or prepayment of any annual installment, the amount of the installment shall be reduced by deducting any sums included therein which are chargeable to lands on which the collection of construction costs is then deferred under the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C., sec.386a), or which are chargeable to other lands and have been already repaid to the United States.

(f) The reimbursable costs heretofore incurred for the construction of the power system and not repaid through the credits provided for in subsections (c) and (d) of this subsection, or through other credits from the revenues of the power system, shall be scheduled for repayment in annual installments of approximately equal amount, in a manner which will provide for liquidation of such costs over a period not exceeding the remaining useful life of the power system as a whole, or not exceeding fifty years from January 1, 1950, whichever period is the lesser. The reimbursable costs hereafter incurred for the construction of the power system shall be added to the schedule of repayments established pursuant to this subsection by increasing the amount or the number, or both, of the annual installments maturing after the incurrence of such costs, in a manner which will provide for their liquidation within



a period not exceeding the useful life of the works involved, or not exceeding fifty years from the time when the additional costs are incurred, whichever period is the lesser. Each annual installment shall be repaid to the United States solely out of the revenues from the power system.

(g) Electric energy available for sale through the power system shall be sold at the lowest rates which, in the judgment of the Secretary of the Interior, will produce net revenues sufficient to liquidate the annual installments of the power system construction costs established pursuant to subsection (f) of this section, and (for the purpose of reducing the irrigation system construction costs chargeable against the lands embraced within the project and of insuring the carrying out of the intent and purpose of legislation and repayment contracts applicable to the project) to yield a reasonable return on the unliquidated portion of the power system construction costs, and (for the same purpose) to yield such additional sums as will cover the amount by which the wholesale value of the electric energy sold exceeds the cost thereof where such excess is the result of the electric energy having been obtained on a special basis in return for water rights or other grants.

(h) All net revenues hereafter accumulated from the power system shall be applied annually to the following purposes, in the following order of priority:

(1) To liquidate all matured installments of the schedule of repayments for construction costs of the power system;

(2) To liquidate all matured installments of the schedule of repayments for construction costs of the irrigation system of each division, on an equal per acre basis for all irrigable lands within the division;

(3) To liquidate unmatured installments of the schedule of repayments for construction costs of the power system which will mature at a date not later than the maturity of any unliquidated installment of irrigation system construction costs;

(4) To liquidate unmatured installments of the schedule of repayments for construction costs of the irrigation system of each division which will mature at a date prior to the maturity of any unliquidated installment of power system construction costs, on an equal per acre basis for all irrigable lands within the division;

(5) To liquidate construction costs chargeable against Indian-owned lands the collection of which is deferred under the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C., sec. 386a); and

(6) To liquidate the annual operation and maintenance costs of the irrigation system.

(i) In applying net revenues from the power system to the annual installments of irrigation system construction costs for any division of the project under the preceding subsection, allowance shall be made for any construction costs deferred under the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C., 386a), or already repaid to the United States which have been deducted from such installments under subsection (e) of this section, by distributing the net revenues available for such application over all irrigable lands within the division on an equal per acre basis, and by applying the net revenues distributed to the lands chargeable with the construction costs that have been so deferred or repaid, in amounts proportionate to the deductions made on account of such costs, to any then unpaid or subsequently assessed costs of operating and maintaining the irrigation system which are chargeable against the same lands.

(j) Any matured installment of irrigation system construction costs, or portion thereof, which is not liquidated at or before its maturity through the application thereto of net revenues from the power system under subsection (h) of this section shall be repaid to the United States by an assessment against the lands chargeable with the construction costs included in the installment. Such repayment shall be deferred for any period of time that may be requisite to provide for the assessment and collection of such costs in conformity with the laws of the State of Montana, but shall be completed within two years after the maturity of the installment concerned.

"Sec. 3. The repayment adjustments provided for in sections 1 and 2 of this Act shall not become effective unless, within two years after the approval of this Act, the irrigation districts embracing lands within the project not covered by trust or restricted patents have entered into contracts satisfactory to the Secretary of the Interior, whereby such districts (1) obligate themselves for the repayment of the construction costs chargeable against all irrigable lands embraced within the districts contracting (exclusive of Indian-owned lands on which the collection of construction costs is deferred) to the extent and in the manner prescribed by sections 1 and 2 of this Act; (2) consent to such revisions in the limits of cost for the project, or any division thereof, as the Secretary and the districts contracting may mutually agree upon in order to facilitate the making of needed improvements and extensions to the irrigation and power systems; (3) provide for redetermination by the Secretary of the irrigable area of the project, or any division thereof, and for the exclusion of lands from the

project, with the consent of the holder of any water rights that would be canceled by such exclusion; and (4) make such other changes in the existing repayment contracts as the Secretary and the districts contracting may mutually agree upon for accomplishment of the purposes of this Act. In order to facilitate the commencement of repayment at the earliest practicable time, such contracts may provide for adjusting the maturity dates or amounts of the annual installments in a manner which will ultimately place the repayment schedules on substantially the same basis as though such contracts had been entered into prior to their actual execution, but not earlier than January 1, 1949.

"Sec. 4. Unpaid charges for operation and maintenance of the irrigation system which were assessed prior to May 10, 1926, against any lands within the project, amounting to a sum not exceeding \$40,549.89, and unpaid charges due from consumers for electric energy sold through the power system between July 1, 1931, and June 30, 1942, amounting to a sum not exceeding \$2,195.16, are hereby canceled. The cancellation of the operation and maintenance charges shall be reported in the reimbursable accounts rendered to the Comptroller General of the United States, pursuant to the Act of April 14, 1910 (36 Stat. 269,270; 25 U.S.C., sec. 145), as deductions from the total indebtedness of the project without regard to the fiscal years in which, or the appropriations from which, the expenditures were made.

"Sec. 5. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the following sums, for the following purposes, to be reimbursed to the United States as hereinafter provided:

(a) The sum of \$64,161.18, with interest thereon at the rate of 4 per centum per annum from May 18, 1916, and the sum of \$409.38, with interest thereon at the same rate from December 1, 1925, to be used to repay the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana the balance remaining due them under the Act of May 18, 1916 (39 Stat. 123, 141). The aggregate principal amount of \$64,570.56 so repaid shall be added to the construction costs of the project and shall be reimbursable.

(b) The sum of \$400,000 to be deposited in the United States Treasury to the credit of the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana; of which sum one-half shall be in full settlement of all claims of said tribes on account of the past use of tribal lands for the physical works and facilities of the irrigation and power systems of the project, or for wildlife refuges; and the other one-half

shall be in full payment to said tribes for a permanent easement to the United States, its grantees and assigns, for the continuation of any and all of the foregoing uses, whether heretofore or hereafter initiated, upon the tribal lands now used or reserved for the foregoing purposes. The said tribes shall have the right to use such tribal lands, and to grant leases or concessions thereon, for any and all purposes not inconsistent with such permanent easement. The amount deposited in the Treasury pursuant to this subsection shall be added to the construction costs of the project and shall be reimbursable.

(c) The sum of \$1,000,000 to continue the construction of the irrigation and power systems of the project. Amounts expended pursuant to this subsection shall be added to the construction costs of the project and shall be reimbursable.

(d) No expenditure shall be made from any appropriation granted under the authorizations contained in this section until the repayment of all reimbursable construction costs incurred through such expenditure has been secured by contracts conforming to the requirements of section 3 of this Act.

"Sec. 6. In each fiscal year commencing after the approval of this Act for which an appropriation of the power revenues from the project is made in an indefinite amount pursuant to section 3 of the Act of August 7, 1946 (60 Stat. 895; 31 U.S.C., sec. 725s-3), the power revenues so appropriated shall be available, to the extent of not to exceed \$75,000, for the purpose, in addition to those other purposes now required or permitted by law, of making such improvements and extensions to the power system as the Secretary of the Interior may deem requisite for the provision of electric service to persons whose applications for such service could not otherwise be complied with in due course of business. Amounts so expended shall be added to the unmatured portion of the reimbursable construction costs of the power system in accordance with subsection 2 (f) of this Act, so as not to reduce the net power revenues available for application under subsection 2 (h) of this Act.

"Sec. 7. Consistent with the terms of the repayment contracts heretofore or hereafter executed, the Secretary of the Interior is hereby authorized to issue such public notices fixing construction costs and apportioning construction charges, to enter into such contracts, to make such determinations, to effect such adjustments in project accounts, to prescribe such regulations, and to do such other acts and things as may be necessary or appropriate to accomplish the purposes of this Act.

"Sec. 8. All Acts or parts thereof inconsistent with the provisions of this Act are hereby repealed."

3. WHEREAS, the District desires to obtain the benefit of the repayment adjustments provided for in sections 1 and 2 of said Act of May 25, 1948; desires to secure the repayment of its appropriate share of the reimbursable construction costs of the project that are incurred under the authorizations contained in section 5 of said Act, in addition to its appropriate share of all other reimbursable construction costs heretofore or hereafter incurred for the benefit of the project; desires to facilitate the making of needed improvements and extensions to the irrigation and power systems of the project and to promote the more effective utilization of these systems in the interest of the water and power users served or capable of being served therefrom, through revisions in the limits of cost applicable to the portions of the project embraced within the District, through the redetermination from time to time of the irrigable area of such portions of the project, and through other appropriate measures in conformity with the provisions of said Act and other laws applicable to the project; and desires to consolidate in this amendatory contract such provisions of the first supplemental contract and the second supplemental contract as need to be retained in effect in order to provide for the payment, as required by existing laws, of those past-due operation and maintenance obligations covered by such supplemental contracts that are not authorized to be consolidated with construction costs or cancelled by said Act of May 25, 1948, and

4. WHEREAS, the United States desires to provide for the accomplishment of the purposes of said Act of May 25, 1948, in cooperation with

the District and with the other irrigation districts that have contracted for repayment of the costs of the project.

Now Therefore, in consideration of the covenants herein contained, it is mutually agreed by the District and by the United States as follows:

5. Section 13 of the original repayment contract is hereby amended to read as follows:

"(a) The reimbursable costs of the project shall comprise all expenses of whatever kind heretofore or hereafter incurred by the United States on account of the project, including the cost of labor, material, equipment, engineering, legal work, superintendence, administration, overhead, rights-of-way, property, electrical energy, and damages of all kinds, as well as all other proper costs and expenses, but excluding any expenses made from funds not subject to a requirement for repayment imposed by law or action taken pursuant to law. The reimbursable costs of the project shall be divided into construction costs and operation and maintenance costs. The construction costs shall comprise all expenses incurred for, or in connection with, the construction or acquisition of the physical works and facilities of the project, and the replacement or repair of substantial portions of such works and facilities in a manner calculated to increase materially their useful life, including the past-due construction charges provided for in the Act of March 4, 1929 (45 Stat. 1623, 1639-40) and such other construction charges as may have become due under the provisions of the public notice referred to in section 31 of this contract or under the provisions of orders or determinations of the Secretary of the Interior made prior to

the first day of January, 1949. The construction costs shall also comprise such operation and maintenance costs, and such interest and penalties on past-due operation and maintenance charges, as the Congress has authorized or may in the future authorize to be consolidated with construction costs, including the undistributed operation and maintenance costs provided for in the Act of March 7, 1928 (45 Stat. 200,212-213), the operation and maintenance costs for the irrigation season of 1931 (to the extent chargeable against lands within the District and lands held by Indians under trust or restricted patents within the portion of the Mission Valley division of the project south of Post Creek) provided for in the Act of February 14, 1931 (46 Stat. 1115, 1127), and the unpaid operation and maintenance charges for the irrigation seasons of 1926 and 1927, together with the interest and penalties thereon, provided for in the Act of May 25, 1948 (Public Law 554- 80th Congress). The operation and maintenance costs shall comprise all other expenses incurred by the United States on account of the project, except those cancelled by section 4 of said Act of May 25, 1948, and those heretofore or hereafter cancelled pursuant to other provisions of law. All costs incurred for, or in connection with, the irrigation system of the project shall be allocated to that system; all costs incurred for, or in connection with, the power system of the project shall be allocated to that system; and any joint costs incurred on account of both systems shall be divided between them on a basis that will reflect, as

accurately as is practicable, the extent of the intended benefits to each from the expenses involved. The construction costs of the irrigation system of the project shall be allocated among the several divisions and irrigation districts of the project, and shall be charged against the lands therein designated by the Secretary of the Interior as irrigable and assessable for construction costs, in a manner consistent with the applicable provisions of law and this contract; and the operation and maintenance costs of the irrigation system of the project shall be allocated among the several divisions and irrigation districts of the project, and shall be charged against the lands therein designated by the Secretary of the Interior as irrigable and assessable for operation and maintenance costs, in a manner consistent with the applicable provisions of law and this contract.

"(b) The amount of the construction costs of the power system of the project at the date of the enactment of said Act of May 25, 1948 (exclusive of costs repaid through credits from the revenues of the power system made prior to that date), is hereby determined to be \$941,793.79; the amount of the construction costs of the irrigation system of the project at that date is hereby determined to be \$9,226,811.87; and the amount of the irrigation system construction costs at that date incurred for the benefit of each division of the project is hereby determined to be: for the Mission Valley division \$7,116,178.82, for the Jocko division \$672,450.87, and for the Camas division \$1,438,182.18, of which last-specified sum the amount of \$598,839.90 constitutes the deferred obligation for repayment of the excess costs of the Camas



division established by the Act of May 10, 1926 (44 Stat. 453,464-466). Subject to the foregoing determinations, the amount of the various classes of costs of the project, whether heretofore or hereafter incurred, and their proper allocation to the various classes of land within the project, whether owned by Indians or non-Indians, and whether within or without the irrigation districts contracting for the repayment of such costs, shall be determined by the Secretary of the Interior, and such decisions, together with the books and records in which they are entered, shall be accepted as final and conclusive."

6. Section 14 of the original repayment contract is hereby amended to read as follows:

"(a) ~~The District hereby obligates itself for the repayment to the United States of the construction costs chargeable against all irrigable lands embraced within the District (exclusive of Indian-owned lands on which the collection of construction costs is deferred) to the extent and in the manner prescribed by sections 1 and 2 of said Act of May 25, 1948. The District hereby agrees that the construction costs of the project, repayment of which is secured by this contract, shall include the amounts of \$64,570.56 and \$400,000 provided for in section 5 of said Act, whenever such amounts are appropriated by the Congress for payment to, or deposit to the credit of, the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana, and the further amount of \$1,000,000 provided for in section 5 of said Act, to the extent that such amount at any time may have been appropriated by the Congress and expended, for the benefit of the project, together with~~

all other amounts now or hereafter comprised within the construction costs of the project, as defined in section 13 of this contract. The District, however, shall not be obligated (unless and until higher limits of costs are agreed to by later contracts) for the repayment of any construction costs incurred by the United States on account of the irrigation system of the project in excess of the following limits for each acre of land within the several divisions of the project (inclusive of Indian-owned lands on which the collection of construction costs is deferred): for the Mission Valley division \$82.00 per acre, for the Jocko division \$68.00 per acre, and for the Camas division \$82.00 per acre, after the deduction of the deferred obligation for the excess costs of that division from its construction costs. The foregoing limits of cost shall be revised at the end of five years from January, 1 1950, and at the end of each succeeding period of five years, by adding to each such limit one-half of the amount, computed on a per acre basis, by which the construction costs of the irrigation system allocated to the division concerned have been liquidated out of power revenues accumulated subsequent to the enactment of said Act of May 25, 1948. The construction costs of the power system of the project shall be repaid to the United States solely out of the net revenues from the power system, as provided in said Act, and shall not be subject to the foregoing limits of cost.

"(b) The net revenues from the power system of the project shall be applied to liquidate or reduce the repayment obligations or requirements for the construction costs, or operation and maintenance costs,

of the project to the extent and in the manner prescribed by sections 1, 2, and 6 of said Act of May 25, 1948. For the purposes of subsection 2(i) of said Act any allowances made by the Secretary of the Interior on account of individually constructed ditches under the authority of the Act of April 23, 1904 (33 Stat. 302), as amended and supplemented by the Act of May 18, 1916 (39 Stat. 123, 139-142), or on account of other works or facilities acquired in accordance with law from the holders of lands chargeable with construction costs of the project, shall, to the extent that such allowances have not been discharged through prior credits against operation and maintenance charges, be treated as repayments of construction costs and be made the basis for operation and maintenance credits from the net revenues of the power system in the manner authorized by that subsection. The gross revenues of the power system, from which the net revenues are to be computed in accordance with said Act of May 25, 1948, shall include those derived from the sale of electrical energy by the project, from the operation by the project of facilities for the generation, transmission or distribution of electrical energy that have been constructed or acquired by the project with reimbursable funds, from the rental of such facilities, from the rental of rights-of-way, property or water rights held by the project for present or future use in connection with the generation, transmission or distribution of electrical energy, and from power development of any sort made by or on account of the project; but shall not include those derived from the rental of Indian lands for power development which are payable to the Indians of the Flathead Reservation

as a tribe under the Act of March 7, 1928 (45 Stat. 200,212-213), or those otherwise provided for by or pursuant to law. The expenses of operating and maintaining the power system, to be used in computing the net revenues under said Act of May 25, 1948, shall include those actually incurred during the period covered by the computation, and those estimated to be incurred during subsequent accounting periods for the performance of such current or deferred operation and maintenance work as necessitates, in the judgment of the Secretary of the Interior, the making of advance provision therefor out of the accumulated net revenues, but such estimated expenses shall be adjusted to conform to the actual expenses as these are incurred. The net revenues from the power system accumulated at the date of the enactment of said Act, after all necessary deductions for current or deferred operation and maintenance and for appropriate reserves, are hereby determined to be \$971,388.79. The proper application of such accumulated net revenues under said Act is hereby determined to be as follows: for liquidation in full of the deferred obligation for the excess costs of the Camas division, \$598,839.90; for reduction of the repayment requirements for the construction costs of the power system, \$36,509.79; and for reduction of the repayment obligations for the construction costs of the irrigation system, \$336,039.10, of which last-specified sum \$277,176.37 is hereby allocated to the Mission Valley division, \$26,078.43 to the Joeko division, and \$32,784.30 to the Camas division. The amount and proper application of the net revenues from the power system accumulated after the date of the enactment of said Act, after all necessary deductions

for current or deferred operation and maintenance and for appropriate reserves, shall be determined by the Secretary of the Interior as of the first day of January in each and every year, beginning with the year 1950, and such decisions, together with the books and records in which they are entered, shall be accepted as final and conclusive.

"(c) The repayment obligations for the construction costs of the irrigation system of the project at the date of the enactment of said Act of May 25, 1948, as reduced through the crediting against such obligations of the net revenues from the power system accumulated at that date, are hereby determined to be: for the Mission Valley division \$6,839,002.45, for the Jocko division \$646,372.44, and for the Camas division \$806,557.98. The construction costs covered by such reduced irrigation repayment obligations shall be repaid in fifty annual installments one of which shall mature on the first day of January in each and every year, commencing with the year 1950 and continuing until the construction costs included in such obligations have been repaid in full. The first annual installment for the Mission Valley division shall be in the amount of \$150,502.45, and the remaining annual installments for that division shall be in the amount of \$136,500 each. The first annual installment for the Jocko division shall be in the amount of \$14,272.44, and the remaining annual installments for that division shall be in the amount of \$12,900 each. The first annual installment for the Camas division shall be in the amount of \$17,657.98, and the remaining annual installments for that division shall be in the amount of \$16,100 each.

All sums paid to, or deposited to the credit of, the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana under section 5 of said Act of May 25, 1948, shall be allocated among the several divisions of the project in proportion to their respective shares of the reduced repayment obligations for the past construction costs of the irrigation system as specified in this paragraph, and shall be added to the annual installments maturing more than one year after the appropriation of these sums, in approximately equal amounts which will provide for the full repayment of these sums within the initial repayment period of fifty years, ending on the first day of January, 1999, hereinabove established. Subject to the limitations contained in subsection 2(e) of said Act, all other construction costs of the irrigation system of the project incurred after the date of the enactment of said Act shall be added to the foregoing schedule of repayments by increasing the amount or the number, or both, of the annual installments as the Secretary of the Interior may prescribe, but no annual installment shall be increased to an amount higher than \$162,000 for the Mission Valley division, \$15,800 for the Jocko division, and \$19,100 for the Camas division, unless the Secretary of the Interior determines that it is necessary to exceed these limits in order to comply with the provisions of said Act. The repayment requirements for the construction costs of the power system of the project at the date of the enactment of said Act, as reduced through the crediting against such requirements of the net revenues from the power system accumulated at that date, are hereby determined to be \$905,284.00. The construction costs covered by such reduced

power repayment requirements shall be repaid in twenty-five annual installments one of which shall mature on the first day of January in each and every year, commencing with the year 1950 and continuing until the construction costs included in such requirements have been repaid in full. The first annual installment shall be in the amount of \$39,844.00, and the remaining annual installments shall be in the amount of \$36,060 each. Subject to the limitations contained in subsection 2(f) of said Act, the construction costs of the power system of the project incurred after the date of the enactment of said Act shall be added to the foregoing schedule of repayments by increasing the amount or the number, or both, of the annual installments as the Secretary of the Interior may prescribe. Changes in the schedules of repayments established by this paragraph shall be effected by orders of the Secretary of the Interior, and the District shall be furnished with a copy of each such order.

"(d) Whenever any annual installment of the construction costs of the irrigation system of the project, as established by or pursuant to the preceding paragraph, is not liquidated in full at or before its maturity through the application thereto of net revenues from the power system of the project, as provided for in the second preceding paragraph, the portion of such installment which has not been so liquidated, or the whole of such installment if none of it has been so liquidated, shall be repayable to the United States by an assessment against the lands chargeable with the construction costs included in such installment. In this event the Secretary of the Interior, as soon after the maturity of such installment as he deems practicable, shall cause a statement showing

the amount that has not been liquidated out of power revenues and that is chargeable against any lands within the corporate area of the District to be furnished to the latter. Thereupon the District shall promptly proceed to assess and levy such sums as may be necessary for the payment to the United States of the amount so specified. One-half of such amount shall become payable on the first day of February and one-half on the first day of July in the year following the year at the beginning of which such wholly or partially unliquidated installment matured."

7. Section 16 of the original repayment contract is hereby amended to read as follows:

"All lands so conveyed to the United States shall be subject to disposition by the Secretary of the Interior in farm units at the appraised price, to which shall be added such amount as may be necessary to cover any accruals against the land and other costs arising from conditions and requirements prescribed by said Secretary. Indian-owned lands held under trust or restricted patents shall not be subject to the provisions of the irrigation district laws of the State of Montana. Indian-owned lands for which a fee patent is issued shall, upon their inclusion within the District as provided in section 9 of this contract, be accorded the same rights and privileges and be subject to the same obligations as other lands within the District, except that such fee patented lands, so long as title thereto remains in an Indian or Indians, shall not be subject to assessment for any construction costs of the project during any period while the collection of construction



costs on these lands is deferred under the Act of July 1, 1932 (47 Stat. 564), or by or pursuant to any other Act of the Congress. All construction costs heretofore or hereafter incurred by the United States on account of the irrigation system of the project (after deduction of the amounts discharged through the application of the net power revenues accumulated on May 25, 1948, as provided in section 14 of this contract) and all uncanceled operation and maintenance costs heretofore or hereafter incurred by the United States on account of the irrigation system of the project shall be, and are hereby made, a first lien under the Act of May 10, 1926 (44 Stat. 453,464-466), against all lands within the project, including those not yet designated as irrigable, and the existence of such lien is hereby recognized and acknowledged by the District. After the total amount covered by such lien which is chargeable against any particular farm unit or other separately bounded landholding has been paid, and all rights of the United States to incur costs, impose assessments, enforce charges or collect repayments with respect to the lands included in such farm unit or landholding have terminated, the lien against such parcel of lands shall be released by the Secretary of the Interior, and a recital of the existence of the lien shall be made in any patent or other instrument of title issued by said Secretary prior to such release. The Secretary of the Interior shall issue such public notice or notices as he may deem necessary for the purpose of giving effect to said Act of May 25, 1948, in a manner consistent with this contract, but no such notice or notices shall be requisite in order to make the provisions of said Act and this contract

applicable to lands embraced within the District, and such provisions shall become effective with respect to such lands forthwith. The District hereby agrees that it will faithfully perform all of the provisions of this contract and of the Acts of the Congress applicable to the project that pertain to any matter within its jurisdiction; and particularly that it will pay to the United States all sums now due, or that may become due in the future, under this contract which are chargeable against or relate to any lands within the corporate area of the District, at such times as are specified in this contract for the making of these payments or, if no definite date be fixed by this contract for the making of particular payments, at such times, not inconsistent with this contract or any applicable provisions of law, as may be specified by order of the Secretary of the Interior. The said Secretary annually shall have prepared and furnished to the District a financial statement showing the costs and revenues of the irrigation and power systems of the project for the preceding calendar year, and showing the balances on hand in the construction accounts and the operation and maintenance accounts as of the end of such year."

8. Section 17 of the original repayment contract is hereby amended to read as follows:

"(a) All delinquent charges for the operation and maintenance of the irrigation system which became due during the period commencing on May 10, 1926, and ending on April 21, 1931, and which remained unpaid on May 9, 1935, and all interest and penalties accruing up to May 9, 1935, on such charges, or on delinquent operation and maintenance

charges assessed prior to May 10, 1926, where such interest and penalties remained unpaid on May 9, 1935 (exclusive of the unpaid operation and maintenance charges for the irrigation seasons of 1926 and 1927, together with the interest and penalties thereon, and the operation and maintenance costs for the irrigation season of 1931, all of which have been covered into construction costs, and exclusive of the operation and maintenance charges against Indian-owned lands, which have been cancelled by the Secretary of the Interior pursuant to the Act of July 1, 1932 (47 Stat. 564)) shall be paid by the District, to the extent that such past-due obligations are chargeable against lands within its corporate area, in the manner prescribed by the Act of May 9, 1935 (49 Stat. 176, 187-188). The amount of the interest and penalties to be included in such past-due obligations shall be determined by adding together the following items as of May 9, 1935: (1) the interest and penalties attaching to the operation and maintenance charges described in this section and chargeable against the various farm units and other landholdings within the District which are shown by the books and records of the project to have been outstanding on December 31, 1930, or at the time when the lands involved were included within the District, if subsequent to that date; and (2) the simple interest at the rate of six per cent per annum on the unpaid principal balance of such operation and maintenance charges authorized by the Act of March 7, 1928 (45 Stat. 200, 212-213), as modified by the Act of February 17, 1933 (47 Stat. 820, 830-831), and owing by the District in accordance with said Acts for the period from December 31, 1930, or the date of the inclusion of the lands

involved, to May 9, 1935, as computed in accordance with the accounting practices of the project. The total amount of the past-due obligations payable under this section shall be divided into seventy semi-annual installments of approximately equal amount; the first semi-annual installment shall mature on June 30, 1949; the second semi-annual installment shall mature on December 31, 1949; and the remaining semi-annual installments shall mature on each succeeding 30th day of June and 31st day of December, respectively, until such past-due obligations have been paid in full to the United States. The payments required by this section shall be made through assessments against the individual farm units and other separately bounded landholdings chargeable with the past-due obligations remaining to be paid, or through such supplemental assessments against other lands within the District as may be necessary to prevent or remove deficiencies in such payments.

"(b) In order to reflect the elimination from the past-due obligations covered by this section of those delinquent obligations formerly payable under said Act of May 9, 1935, which have since been covered into construction costs or cancelled, the Secretary of the Interior shall cause to be prepared a revised schedule of the payments required by this section. Such schedule shall set forth in conformity with the provisions of the preceding paragraph the amount and maturity date of each of the seventy semi-annual installments in which the past-due obligations remaining subject to this section are to be paid, shall credit against these installments in the order of their respective maturities all payments made since May 9, 1935, on account of the past-due

obligations remaining subject to this section, and shall show the nature and amount of the sums chargeable against the various farm units and other landholdings embraced within the District on account of such past-due obligations. Such revised schedule shall be furnished to the District within four months after the taking effect of the amendments to this contract made in pursuance of said Act of May 25, 1948. The District shall thereupon proceed to assess and levy sums sufficient to liquidate in full any semi-annual installments shown by such schedule to be unpaid that have matured, or that will mature within one year after the taking effect of such amendments, and shall pay to the United States the amount due under such installments within two years after the taking effect of such amendments. On or before each 15th day of June after the taking effect of such amendments the Secretary of the Interior shall cause the District to be furnished with a list of any changes in the foregoing schedule necessitated by reason of payments made to him by the holders of the lands chargeable with such past-due obligations or by reason of the inclusion or exclusion of lands within or from the District. Upon the basis of such schedule and any lists of changes so furnished, the District shall annually assess and levy sums sufficient to liquidate the remaining semi-annual installments as they mature, and shall pay to the United States the amount of each such installment on or before its maturity date. The District, however, may, at its option, pay to the United States at any time the full amount then outstanding on account of the past-due obligations covered by this section, in lieu of liquidating them by installments, and may, at

its option, pay out of general funds of the District any sums due or to become due under this section, in lieu of levying separate assessments for such sums.

"(c) The provisions of this section shall not apply to interest and penalties on delinquent operation and maintenance charges assessed prior to May 10, 1926, if the Comptroller General of the United States determines that such interest and penalties were cancelled by section 4 of said Act of May 25, 1948, or if the Congress enacts legislation expressly cancelling such interest and penalties. The United States, however, shall not be obligated to refund any payment on account of such interest and penalties made prior to the date of such determination or enactment, as the case may be."

9. Section 24 of the original repayment contract is hereby amended to read as follows:

"The Secretary of the Interior shall, if funds are available therefor, cause the area of the project and the irrigability of the several portions thereof to be redetermined at intervals of approximately five years, and may cause the same to be done at such other times as he deems appropriate, the expenses of such redeterminations to be treated as operation and maintenance costs of the project. He may establish land classification boards, composed in part of water users on the project, to assist in this work with respect to the project as a whole or with respect to any portions thereof he may deem to be in particular need of reexamination. Any lands within the project to which water can be delivered through the irrigation system of the project as actually

constructed, except unentered public lands and vacant unsold state school lands, may be designated by the Secretary of the Interior as irrigable for the purposes of this contract, either in connection with the periodic redeterminations required by this section or in such other manner as he deems appropriate, but all such designations shall be subject to revision from time to time. If the Secretary of the Interior shall find any lands within the project to be permanently incapable of successful cultivation under irrigation, on account of seepage, alkaline conditions, unavailability of water, or for any other reason, he may, in his discretion, exclude these lands from the project, with the consent of the holder of any water rights that may appertain to the lands by reason of their inclusion within the project or of any water rights that would be otherwise cancelled by such exclusion; whereupon any water rights appertaining to the lands by reason of their inclusion within the project shall be severed from them and shall be available for transfer by said Secretary to any other lands theretofore or thereafter brought within the project. If the Secretary of the Interior shall find any lands not within the project to be capable of successful cultivation under irrigation through existing or prospective works of the project, and that a water supply can be made available for them without prejudice to the water supply of the areas already within the project, he may, in his discretion, include these lands within the project upon such terms and conditions, not inconsistent with law or this contract, as he deems appropriate. No lands shall be excluded from or included within the project under the foregoing authorizations

if the effect of such action would be to decrease or increase by more than five percent the existing area of any division wherein lands embraced within the District are situated, unless the exclusion or inclusion of such lands has been consented to by the District. For the purposes of this contract the existing area of the project shall be considered to be the area of 138,194.55 acres included in classes 1, 2, and 3 of the project land classification dated October 7, 1930, and approved by the First Assistant Secretary of the Interior on March 28, 1931, whereof 111,659.65 acres are within the Mission Valley Division, 13,364.87 acres are within the Jocko division, and 13,170.03 acres are within the Camas division. The liability of the District for the payments required by this contract shall not be increased or reduced by reason of any alterations in the area of the project (except that the basis for applying to such liability the limits of cost established by section 14 shall be the area of the several divisions of the project as diminished or enlarged by such alterations), or by reason of any alterations in the area of the lands designated as irrigable from works of the project, or by reason of any alterations in the area of the lands made assessable for particular charges of the project, provided such alterations are made in pursuance of and in accordance with said Act of May 25, 1948, or this contract. No suspension of any charges shall be made by the District without the consent of the Secretary of the Interior."

10. The original repayment contract is hereby amended by adding the following new section, to be numbered section 31:



"Any provision of this contract which is in conflict with said Act of May 25, 1948, or with the amendments to this contract made in pursuance of said Act, is hereby amended to conform to said Act or to such amendments, as the case may be. The provisions of the public notice fixing construction charges for the project issued on November 1, 1930, as amended and supplemented on April 20, 1931, insofar as those provisions relate to construction charges against lands embraced within the District, shall be superseded by this contract, and shall be deemed to have become inapplicable to such lands as of the first day of January, 1949, when the deferment of the construction charges fixed by such notice terminates pursuant to the Act of July 20, 1947 (61 Stat. 494). The Secretary of the Interior may, where not inconsistent with law, delegate any of the functions placed in him or in the United States by this contract to the Project Engineer for the Flathead Indian Irrigation Project or to such other official as he may designate."

11. The first supplemental contract, the second supplemental contract, and section 18 of the original repayment contract are hereby rescinded and cancelled.

12. Nothing contained in this amendatory contract shall be construed to require the refund of any payments made to the United States prior to the taking effect of this amendatory contract, or to require the refund of any collections made by the District prior to such time, or to invalidate any assessment imposed or any other act or thing done prior to such time, under those provisions of the original repayment contract, the first supplemental contract, or the second supplemental

contract which are amended or cancelled by this amendatory contract.

13. The execution of this amendatory contract shall be authorized by qualified holders of title or evidence of title to lands embraced within the District as provided by the laws of the State of Montana. The Board of Commissioners of the District shall thereupon proceed, in accordance with said laws, to provide for the annual levy and collection of a special tax or assessment upon all lands then included within the District, or subsequently brought therein, that are not covered by trust or restricted patents and are subject to taxation or assessment for the obligations imposed or continued by this contract; such special tax or assessment to be sufficient in amount to meet all payments due or to become due to the United States from the District under the original repayment contract, as amended by this contract, at the times when such payments become due to the United States and payable by the District under such original repayment contract, as so amended. In addition, the Board of Commissioners of the District shall prosecute an action in a court of competent jurisdiction for a judicial confirmation, under the laws of the State of Montana, of the validity of the proceedings had relative to the making of this amendatory contract and to the imposition of the special tax or assessment required to be levied and collected annually for its performance. Certified copies of such proceedings and their judicial confirmation shall be furnished by the District to the United States for its files. This amendatory contract shall not become binding upon the United States until the Secretary of the Interior shall be satisfied that all conditions requisite for the validity and

enforceability of the obligations imposed or continued thereby have been met, nor until he shall be satisfied that the other irrigation districts embracing lands within the project not covered by trust or restricted patents have entered into valid and enforceable contracts conforming to the provisions of said Act of May 25, 1948. Such satisfaction shall be evidenced by the final execution of this amendatory contract by the Secretary of the Interior, and its provisions shall take effect upon the date of such final execution.

14. No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefits 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.

15. This agreement shall inure to the benefit of and be binding upon the District and its successors and assigns, and the United States and its assigns.