

It is expressly understood and agreed that the Company under the provisions of this Article in no way waives energy replacements which are to be made as provided in Article 16 of this contract.

It is also expressly understood and agreed that the United States or the Provo Association shall at no time be obligated to release any waters from the Deer Creek Reservoir for use through the Olmsted plant beyond the natural flow of Provo River as such natural flow may be modified by exercise of the tertiary storage right or by other rights for variation in natural flow herein granted to the Company.

#### REPLACEMENT OF ENERGY LOSSES AND ACCOUNTING FOR ENERGY INCREASES

16. Replacement of energy losses suffered by the Company at its Weber and Riverdale plants as a result of the withholding or diversion of Weber River power water, and at its Olmsted plant as a result of impounding Provo River power water, and the accounting for energy increases will be made as follows:

- (a) The said energy losses shall be recorded by the Company daily and the total thereof shall be accounted for each month as a debit in kilowatt hours to the operations of the United States or the Provo Association. The amount of such debit shall each month be deducted from the credit balance which has been established under the provisions of Article 14 hereof and as hereinafter provided for under subparagraphs (b) and (c) of this article. At no time shall the monthly debit in kilowatt hours exceed the credit balance, except by consent of the Company.
- (b) Energy replacements incident to concurrent power capacity replacements shall be received by the Company as concurrent energy replacements. Such

concurrent energy replacements together with winter energy increases in excess of concurrent energy replacements shall be recorded daily by the Company and the total thereof shall be accounted for in kilowatt hours each month as a credit to the operations of the United States or the Provo Association unless the Company elects not to accept or give credit for energy increases in excess of 10,000,000 kilowatt hours as provided for under subparagraph (d) of this article in which case credit shall not exceed the amount necessary for concurrent energy replacements.

- (c) Credits for kilowatt hours of energy received by the Company as concurrent energy replacements together with winter energy increases in excess of concurrent energy replacements as provided for under subparagraph (b) of this article, and credits issued by the Company to the United States or the Provo Association for use of summer water as provided in Article 14 hereof shall be cumulative except as reduced from time to time by energy debits and/or payments by the Company as provided for in subparagraphs (a) and (d) of this article.
- (d) Whenever the kilowatt hour credit balance of the United States or the Provo Association is 10,000,000 kilowatt hours or more, the Company must exercise its option:
1. to accept and pay for at 2 mills per k.w.h. all excess energy which would otherwise result in a credit balance in excess of 10,000,000 k.w.h., or,
  2. to designate amounts of power water of Provo River and times when the same is to be withheld in Deer Creek Reservoir which will result in the credit balance being reduced to 10,000,000 k.w.h. prior to the beginning of the following irrigation season, but if the United States and/or the Provo Association fails to withhold power water at the Deer Creek dam in the amounts designated by the Company, the credit balance shall automatically be reduced to 10,000,000 k.w.h. on June 30, following. However, any reduction in the power capacity output of a power plant at the Deer Creek dam resulting from such storage of power water, shall (to the extent such reduction prevents the making of power capacity replacements) be deducted from the power capacity losses occurring at the Weber and Riverdale plants.

If the Company elects option 1 to accept and pay for energy in excess of 10,000,000 k.w.h. standing to the credit of the United States or the Provo Association at the end of the succeeding calendar month, then the Company shall within thirty days after receipt of a proper bill or invoice pay the United States and/or the Provo Association (whichever is entitled thereto as provided in the repayment contract between the United States and the Provo River Water Users' Association, dated June 27, 1936) 2 mills per kilowatt-hour for all such excess energy.

If the Company elects option 2, it shall not while such option is in effect be required to use power from any source other than the Murdock and Olmsted plants, nor be required to use water furnished to these plants by the United States or the Provo Association to any greater extent than is necessary to produce energy which when taken together with the credits in excess of 10,000,000 k.w.h. will make a full replacement of energy losses incident to the power capacity losses at the Weber and Riverdale plants.

The provisions of this subparagraph (d) shall be carried out as follows: Thirty days prior to October 15 of each year and on the 15th of each month during the ensuing winter season including the month of April, the United States or the Provo Association shall furnish the Company with the best information available regarding the quantity of Weber River power water that the United States or the Provo Association intends to divert to the Provo River and/or impound in the Echo Reservoir during the succeeding calendar month and the quantity of water that is intended to be furnished to the Company at the Murdock and Olmsted plants for power capacity replacements and energy replacements and for energy increases. If it appears probable from the information available that the operations of the United States or the Provo Association as proposed during the succeeding calendar month will result in a net energy kilowatt-hour credit which with the credit balance at the end of the then current month will exceed 10,000,000 k.w.h. then the Company shall notify the United States or the Provo Association in writing prior to the first of the succeeding calendar month of its election under its option.

If the Company shall fail to give notice of its election under its option, then energy received by it in excess of said 10,000,000 k.w.h. shall be paid for as if the Company had elected to accept and pay for the same.

USE OF MURDOCK PLANT

17. The Company will permit the Murdock plant to be used for power capacity replacements, energy replacements and energy increases so long as said plant is operated by the Company without constructing a new pipe line or flume to serve said plant. Until such time as a new pipe line or flume is constructed the Company shall not be required to utilize water furnished by the United States or the Provo Association (in addition to the water which the Company is otherwise entitled to use) for power capacity replacements, energy replacements or energy increases in any greater amount than can be effectively used by the plant in its condition as maintained by the Company. The Company shall not be required to increase its installation or to increase materially its operating or maintenance expenses in order to utilize water furnished by the United States or the Provo Association for power capacity replacements, energy replacements and energy increases.

Whenever the Company determines to construct a new pipe line or flume to serve the Murdock plant the Company will give notice of its intention so to construct not less than one year in advance of commencement of construction, and the United States or the Provo Association shall have the option, if exercised within said year, to participate in such new construction on the following terms:  
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the United States and/or the Provo Association shall advance to the Company an amount equal to the actual expenditures in connection therewith not exceeding \$250,000, exclusive of any allocation



of general office expense, which shall be paid to the Company upon monthly presentation of certified statements in sufficient detail to show the character of expenditures. The Company shall repay such funds, together with interest in the amount of \$50,000, in annual installments of \$10,000, the first of which shall be due and payable on January 1 next after the completion of the construction of said new pipe line or flume with subsequent installments on the same date of each year thereafter until the entire indebtedness; i.e. \$330,000, is paid. Installments not paid when due shall thereafter bear interest at the rate of six per cent (6%) per annum until paid. If the United States and/or the Provo Association participates in the construction of said pipe line or flume as herein provided for, such pipe line or flume shall have a capacity of not less than 120 c.f.s. and thereafter the Murdock plant shall be used and operated by the Company for power capacity replacements, energy replacements and energy increases as provided in Articles 15 and 16 of this contract, except as to interruptions beyond the control of the Company, until the indebtedness to the United States and/or the Provo Association incurred in constructing the new pipe line or flume is paid in full, and thereafter so long as the said new pipe line is usable.

If the United States and/or the Provo Association determine not to participate in the construction of the new pipe line or flume and said new pipe line or flume is constructed by the Company, the Murdock plant, after such construction of said new pipe line

or flume regardless of the quantity or source of the water, shall not be used for power capacity replacements, energy replacements, or energy increases.

#### USE OF OLMSTED PLANT

18. The Company may discontinue or alter the operation of the Olmsted plant at any time and shall not be obligated to increase installation or to increase materially operation and maintenance expenses of said plant to use the increased flow furnished by the United States or the Provo Association and the use of said plant in power capacity replacements, energy replacements and energy increases shall be limited to the extent that said plant may effectively utilize the increased flow of water available for such purposes.

#### TERMINATION OF TRACTION COMPANY LEASE

19. So long as the Power Company operates the Weber plant, under its lease with the Traction Company dated January 2, 1915, or otherwise, replacements of power capacity losses and energy losses shall be made as provided in Articles 15 and 16 of this contract. In the event that said lease is terminated, or if for any reason the Traction Company repossesses and operates said Weber plant, then replacements of power capacity losses and energy losses occurring at said plant, shall be made by the United States or the Provo Association as provided in Articles 15 and 16 of this contract, except that said replacements so furnished shall be increased by the amounts necessary to cover transmission losses incurred in delivery. The Power Company shall deliver water to the

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capacity replacements and energy replacements to the Traction

Company at the point on the Power Company's lines nearest the

★ Weber plant, and if the Power Company fails so to do, then the ★

United States or the Provo Association shall deliver to the

Traction Company at the Weber plant, or at some other mutually

agreeable point, the Traction Company's proper share of concur-

rent capacity and energy replacements (or otherwise fully com-

pensate said Traction Company for such capacity and energy losses)

and the Power Company agrees to the use of its lines for this

purpose without cost to the United States or the Provo Associa-

tion.

#### TERTIARY STORAGE CAPACITY

20. To enable the best utilization of the Olmsted power ★

plant both in the interests of the Company and of the Provo

River Project, the latter benefiting mainly by furtherance of

its Deer Creek reservoir-Utah Lake water exchanges, it is here-

by agreed that the Company shall have a tertiary storage capac-

ity right to utilize without cost up to 10,000 acre-feet of

storage capacity in Deer Creek reservoir when the same is not

being used under the primary rights of the United States and/or

the Provo Association or the secondary rights of the subscribers

thereto as defined in their subscription contracts now or here-

after executed. The tertiary storage capacity right granted to

the Company in this article may be used only between October 15

of one year and April 15 of the following year for the storage

of the natural flow water of the Provo River which the Company

is entitled to use under its Olmsted power rights of 445 c.f.s.,



and the United States and/or the Provo Association agrees to store said water of the Company and release the same in such amounts and at such times between said dates as the Company shall specify; Provided, that said storage of the Company's water shall not interfere with the use of the natural flow of Provo River by the United States and/or the Provo Association for power capacity replacement purposes; and Provided, that the outflow from the Deer Creek Reservoir shall not be reduced below 200 acre feet in any one day, and so far as practicable the natural river flow during daylight hours shall not be reduced below 150 second feet just above said Olmsted intake. The United States and the Provo Association shall provide the necessary facilities for controlling the flow from the reservoir and for impounding and releasing water therefrom and shall operate the same without expense to the Company.

#### RECORDS AND COMPUTATIONS

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21. (a) The Company shall install, operate and maintain suitable devices for reliable recordation of stream flow available for diversion to its Riverdale, Weber, Murdock, and Olmsted power plants, except as such measurements are made by others, and shall arrange for reliable recordation of waters actually diverted.

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(b) The Weber Association shall similarly arrange for recordation of reservoir stages at Echo Reservoir, of the flows of Weber River and Chalk Creek immediately above Echo Reservoir and of the flow of Weber River immediately below Echo Reservoir.



\* and the United States and the Provo Association shall similarly  
arrange for recordation of diversions by the Weber-Provo diver-  
sion canal and flows therein at the head and at or near the  
summit between Weber and Provo rivers, diversions from Duchesne  
River to Provo River, inflow and outflow at Deer Creek Reservoir  
and reservoir stages at Deer Creek Reservoir.

(c) The Company, as to points of measurement described in (a), and the United States or the two associations, as to points described in (b), will prepare continuous and complete records of daily flows or reservoir stages, except as shorter periods may be necessary in some cases, and each will supply the other without cost with copies of such determined flows or stages as may be required.

(d) The Company shall keep records of power capacity, power capacity losses, power capacity replacements, energy increases, energy losses and energy replacements and shall on or before the close of each month submit to the United States and to each association a comprehensive statement of energy credits and debits as of the end of the previous month. Such statement shall be held to be conclusive unless the United States or either association shall give notice of disagreement within thirty days after rendition of such statement.

(e) Authorized representatives of the Company, the United States and the two Associations, shall be accorded access at all times to recording equipment at the stations enumerated for inspection or check determinations, and during office hours

shall be accorded access to any and all records made pursuant to the provisions of subparagraphs (a), (b), (c), and (d) of this article and to make copies thereof. No such records shall be destroyed or removed for a period of two years after their preparation.

DIVISION OF WITHHELD WEBER WATERS

22. The Weber Association and the Provo Association agree to an equal division of all Weber River power water stored in Echo Reservoir and/or diverted to the Provo River pursuant to the provisions of this contract, and the total amount of power water so divided shall be the sum of the net storage gain in the Echo Reservoir by reason of power water withheld therein pursuant to Article II, 15g and 15h hereof plus the power water diverted through the Weber-Provo Diversion Canal, measured at or near Station 463 on said Weber-Provo Diversion Canal, except that when power waters (or other waters) stored in Echo Reservoir are being exchanged for diversions to Provo River the point of measurement on the Weber-Provo Diversion Canal shall be at or immediately below its headworks on the Weber River. The Weber Association further agrees that such power water accruing to the Provo Association may at any time from October 15 to June 30 of the following year be either diverted to Provo River, or temporarily stored in Echo Reservoir (when and to the extent the storage capacity of said reservoir is not being used under the primary rights of the Weber Association or the secondary rights heretofore or hereafter granted to the stockholders of the Weber Association) and subsequently diverted to Provo River by exchange. Provided



however, <sup>★</sup> that when Echo Reservoir spills, such spills shall be charged first to Provo Association power water previously stored there in if any remains; and provided further, that in the event any power water of the Provo Association remains in Echo Reservoir on July 1 of any year, it shall become the property of the Weber Association.

<sup>★</sup> Weber River power water diverted in any winter to the Provo River by the United States or the Provo Association in excess of its share (i.e. 50% of the total amount of power water that may reasonably be withheld at and above Echo Dam under the provisions of Articles 11, 15g and 15h of this contract) <sup>★</sup> shall not, without the consent of the Weber Association, exceed an amount equal to the pro-rata share of the storage water in Echo Reservoir belonging to the Weber Association's stockholders on Provo River diverting below Deer Creek Dam; and all such excess diversions of power water shall be deemed to be Echo Reservoir storage water and shall be released from Deer Creek Reservoir upon request of the Weber Association, for use of the Weber Association's stockholders on the Provo River diverting below Deer Creek Dam; Provided, however, that such release shall in no event exceed the unfilled capacity of the Echo Reservoir at maximum stage during the irrigation season following the winter period when such excess diversions of power water to the Provo River are made, it being understood that water in excess of such required releases shall become the property of the Provo Association.

It is further understood and agreed that diversions of Weber River power water (by direct diversion or by exchange) to the Provo River by the United States or the Provo Association shall be subject to the exchange rights of the Weber Association or present and future stockholders of the Weber Association, to divert water for irrigation and domestic purposes from the Weber River above Echo Reservoir in exchange for its or their Echo Reservoir storage water; provided, that said diversions from the Weber River to the Provo River for the Weber Association stockholders in exchange for their Echo Reservoir storage water shall not exceed an amount equal to the pro-rata share of storage water in Echo Reservoir belonging to the Weber Association stockholders on Provo River.

★ It is further understood and agreed that Weber River power water accruing to the Weber Association under the provisions of this contract shall be used only to augment the storage supply of the Echo Reservoir to the extent of filling said reservoir once each year to its capacity of 74,000 acre feet and not otherwise. ★

RIGHT OF WAY FOR PROVO RESERVOIR CANAL ENLARGEMENT

23. The Company agrees to grant to the United States or the Provo Association without cost a perpetual easement to reconstruct, enlarge, operate, and maintain that portion of the Provo Reservoir Canal which is to be enlarged by the United States as a part of the Deer Creek Division of the Provo River Project, where such portion of said canal crosses land belonging to the Company; Provided, that the location of such canal and



the plans and specifications with respect to such reconstruction and enlargement shall be subject to approval by the Company.

REMOVAL AND RECONSTRUCTION OF TRANSMISSION LINES

24. The Company at the sole cost and expense of the United States as hereinafter stated, will and is hereby authorized to relocate and reconstruct such portion of its power line situated within the Deer Creek Reservoir site or which will be interfered with by the construction of said dam, reservoir, and appurtenant works, on a suitable location satisfactory to the Company and to the Chief Engineer of the Bureau of Reclamation outside of and away from said dam, reservoir, and appurtenant works, all in accordance with the Company's standard practice for a power line of the character of the one which is to be displaced. On completion of the construction of said power line in the new location, the Company at the sole cost and expense of the United States will take up and remove said portion of the existing line to be abandoned as contemplated and credit the United States with any salvage therefrom.

The portion of the power line to be removed and relocated was constructed and is now maintained and operated in its present location under and by virtue of easement rights heretofore obtained from the then fee owners of the land upon which said line is located. Rights of way for the location of the new section of line which grant to the Company easement rights equivalent to

those to be surrendered in removing the old line shall be procured and delivered to the Company by the United States, if the United States is able to obtain such rights of way by amicable arrangements with the landowners. If the United States is unable to obtain the rights of way by amicable arrangements with the landowners, the Provo Association shall acquire such needed rights of way and convey the same to the Company.

The cost and expense incurred by the Company properly chargeable to the United States under this article shall be all costs and expenses (including, but not specifically limited to labor, materials, surveys, rights of way, damage to property during construction, supervision and overhead) entering into the work of constructing the new line and/or removing the old, less the salvage value of the material removed from the old line. All expenses incurred by the Company properly chargeable to the United States hereunder shall be paid to the Company by the United States from time to time during the progress of the work upon bills rendered by the Company. Such bills shall be rendered monthly during the progress of the work and shall be paid by the United States within thirty (30) days after rendition. The maximum obligation of the United States to the Company for work contemplated under this article shall not exceed Four Thousand dollars (\$4,000.00).

WITHHOLDING OF WATER FROM OLMSTED PLANT DURING  
INSTALLATION OF GATES AT DEER CREEK DAM

25. The Company will permit the United States and/or the Provo Association to withhold water from the Olmsted plant for a

period of five (5) consecutive days at such time as the gates are being installed at the Deer Creek dam without any claim whatsoever for compensation or damage; provided, that the water be withheld at a time to be agreed upon by the Company and the United States.

#### REPRESENTATION

26. In all matters covered by this contract requiring action or determination by representatives of the parties hereto, the United States shall be represented by the Chief Engineer of the Bureau of Reclamation, the Company by its Chief Engineer, and each Association by the official known to be in recognized charge of project operations unless the parties hereto shall otherwise designate and the official representative may in turn designate others to act in their place; Provided, however, that any party hereto at any time may require the filing of a certified copy of authorization for representation as a prerequisite for acceptance of the assertion of such authority.

#### EXPENDITURES CONTINGENT UPON APPROPRIATIONS

27. Where the operations of this contract extend beyond the current fiscal year, it is understood that the contract is made contingent upon Congress making the necessary appropriation for expenditures thereunder after such current year has expired. In case such appropriation ~~is~~ may be necessary to carry out this contract is not made, the contractors hereby release the United States from all liability due to the failure of Congress to make such appropriation.