

WATER MARKETING CONTRACT
BETWEEN THE
STATE WATER CONSERVATION BOARD OF THE STATE OF MONTANA
AND THE NEVADA CREEK WATER USERS' ASSOCIATION

This contract made as of this 5th day of January 1938, between the State Water Conservation Board of the State of Montana, duly created, authorized and acting under, by virtue of, and in pursuance of Chapter 35 of the Laws of Montana, 1933-1934, and Chapter 95, Laws of Montana, 1935, and acts amendatory thereof, or supplemental thereto, hereinafter called the "Board" and the Nevada Creek Water Users' Association, a corporation duly organized and existing under and in pursuance of the laws of the State of Montana, hereinafter called the "Association"

W I T N E S S E T H

WHEREAS, the Board proposes to construct an irrigation and flood control project (herein called the "project") comprising the construction in Powell County of a dam across Nevada Creek, a reservoir outlet works and spillway including the enlarging and extending of the Hoepfner Ditch to Douglas Creek, all pursuant to the application (herein called the "application") of the Board filed with the Federal Emergency Administration of Public Works, P.W.A. Docket Montana No. 1007; and

WHEREAS, the Board has acquired the right to store, control and/or divert all unappropriated water of Nevada Creek, Powell County, Montana, and all tributaries there-to, together with the return flow of all water furnished or supplied by seeping or over-flowing from the previous place of use of said waters, pursuant to a declaration duly filed on the 7th day of September, 1937, in the office of the County Clerk and Recorder of Powell County, Montana, in Book 2, page 279, all in accordance with Chapter 35, Laws of Montana, 1933-1934, and has further acquired all other water and water rights and made all other filings, which are necessary in order to enable it to obtain sufficient waters so that the project may be operated at its full capacity; and

WHEREAS, the project will have an estimated live capacity of at least 10,500 acre feet of water annually, and it is agreed by the parties hereto that the total waters to which the Board is entitled will be at least sufficient to permit the operation of said project at its full capacity so that 10,500 acre feet of water can be made available annually during the irrigation season; and

WHEREAS, the Board has heretofore applied to the Federal Emergency Administration of Public Works for a loan and grant of \$258,181.00 to finance the construction of said project; and

WHEREAS, the Federal Emergency Administration of Public Works (herein called the "Government") has approved said application and on behalf of the United States of America has entered into a certain loan and grant agreement (herein called the "loan and grant agreement") with the Board, dated as of October 2, 1937, and any amendments and supplements thereto, for the making of such a loan and grant; and

WHEREAS, the Board proposes to issue its Water Conservation Revenue Bonds, Series M (herein called the "Bonds"), to evidence its loan from the Government, and to secure such bonds by a trust indenture (herein called the "Indenture") from the Board to a bank or trust company, as trustee (herein called the "Trustee"), and by said Indenture to assign this contract and the water purchase contracts (hereinafter provided for) to the Trustee as additional security for the Bonds, all as more fully set forth in said loan and grant agreement; and

WHEREAS, the Association desires that the Board construct the project and sell to the Association all of the water to be impounded in the project and the Board desires that the Association purchase and undertake to market all of said water in accordance with the provisions hereof;

NOW, THEREFORE, in consideration of the premises and of the mutual terms, covenants and conditions hereof, it is mutually covenanted and agreed as follows:

Section 1. The Board, upon the completion of the project, will furnish to the Association the total available yield of storage water from the project, said water to be furnished to the Association each year during the irrigation season beginning May 1 and ending September 30, for the purpose of irrigation, watering of stock, domestic and municipal uses and for other purposes. The Association shall cause said water to be put to beneficial use, with diligence and in accordance with law. The limit of the right of the Association to said water shall rest perpetually in the beneficial application of the same by the Association and the purchasers thereof from the Association. The sole obligation of the Board with reference to the furnishing of water hereunder shall be to impound the available unappropriated waters to which it is entitled as aforesaid and to cause such waters to be made available to the Association at the reservoir comprising the project. So long as the right of the Association under this contract to distribute the water of the project has not been terminated, the Board shall be under no obligation to distribute water to those entitled to water under their water purchase contracts (hereinafter provided for), it being expressly understood that the Association only shall be so obligated. It is estimated that 10,500 acre feet of water will be available annually to be furnished to the Association, but in the event that from time to time a lesser amount of water is available, in any year, the Association nevertheless shall be obligated to pay the full sums due under this contract and to perform its covenants and obligations hereunder. The Board shall use all reasonable means to guard against water shortage, but in no event shall the Board or any of its officers, agents or employees be liable for any damage, direct or indirect, arising from water shortage, nor shall any such water shortage relieve the Association from its obligations hereunder.

Section 2. The Association shall pay to the Board the sum of Eleven Thousand Twenty Five (\$11,025.00) Dollars on December 15, 1939, and the sum of Eleven Thousand Twenty Five (\$11,025.00) Dollars on December 15 of each and every year thereafter to and including December 15, 1967.

On December 15, 1939, and on December 15 of each and every year thereafter during the useful life of the project, the Association also shall pay to the Board such amount as the Board shall have previously notified the Association (by written notice given at least 60 days prior to each such December 15) to be necessary for the purpose of paying the operating costs of the project for the year following respectively each said December 15. The term "operating costs" as used herein shall include all costs of maintenance, repair, operation, and necessary alteration of the project, and all costs incurred by the Association or the Board in the distribution of water from the project. The determination by the Board of the amount and necessity of such operating costs and the annual amounts payable by the Association to meet such operating costs shall be final, conclusive and binding upon the parties hereto, and the amounts so determined shall be deemed a debt, payable as aforesaid, to the same extent as if the amounts were specifically enumerated herein. Notwithstanding the provisions of any water purchase contract, the determination by the Board of the amount and necessity of operation costs and the annual amounts payable by water purchasers to meet such operating costs shall be final, conclusive and binding upon the Association and the water purchasers.

Section 3. The payments and obligations of the Association hereunder are for the privilege of obtaining water so long as the Association shall not be in default under this contract or its rights terminated hereunder, and the Association shall be obligated to pay such annual installments and perform its covenants and duties hereunder, notwithstanding the fact that no water shall be available by reason of shortage or otherwise, or that no water is actually taken by the Association, or that the Board may withhold water from the Association by reason of its default under this contract. The obligation of the Association to make the payments required hereby shall be absolute and unconditional so long as this contract remains in full force and effect. It is expressly understood that all right, title and interest in and to the project and the water rights exercised in connection therewith shall be and remain in the Board and that the Association shall acquire no right, title or interest in the project. The Association shall acquire no right or equities under this contract which will in any manner prejudice the right of the Board to terminate this contract in the event that the Association shall be in default hereunder.

All monies required to be paid by the Association to the Board hereunder shall be paid at Helena, Montana, or such other place as the Board shall appoint in writing. Every installment or other sum of money required to be paid to the Board under this contract, which shall remain unpaid after the same becomes due, shall bear interest at the rate of six per centum per annum.

Section 4. Within thirty (30) days from the date hereof, the Association hereby agrees to enter into contracts (herein called "water purchase contracts") with water users for the sale of 10,500 acre feet of water from the project annually. The Association further agrees that in the event that the live capacity of the project, when completed, is greater than that estimated, and the amount of water available from the project will permit the furnishing of more than 10,500 acre feet of water annually, the Association promptly will enter into additional water purchase contracts so that water in the amount of the actual live capacity of the project will be sold annually pursuant to outstanding water purchase contracts. The Association shall not furnish or deliver to any water purchaser in any year an amount of water which shall be in excess of the amount to which such water purchaser is entitled under his water purchase contract.

The water purchase contracts shall be substantially in the form attached hereto as Exhibit A and shall be executed in quadruplicate, one copy to be retained by the water purchaser, one copy by the Association, and two copies by the Board which shall in turn deposit one of said copies with the Trustee in accordance with the Indenture, pursuant to which all such contracts are to be assigned by the Board to the Trustee as security for the Bonds. The price to be charged for the privilege annually to an acre foot of water, or in case of such shortage to the share apportioned to each acre foot, shall be at least sufficient at times to enable the Association to meet its obligations hereunder to the Board. all

The water purchaser shall cause said water to be put to beneficial use with diligence and in accordance with law. The limit of the right of the purchaser to said water shall rest perpetually in the beneficial application of same by him. The manner of delivering, measuring and regulating the supply of water to the water purchaser shall be proscribed and controlled, so long as the right of the Association to market water hereunder shall not be terminated, by the Association which may make rules and regulations in connection therewith; provided that all such action by the Association shall be satisfactory to the Board. In the event that the right of the Association to market water hereunder is terminated, the Board shall exercise said functions and powers.

In no event shall the Board or the Association or any of their respective officers, agents or employees be liable to water purchasers for any damage, direct or indirect, arising from water shortage, nor shall any such water shortage relieve a water purchaser from his obligations under his water purchase contract. The water purchaser shall aid and cooperate with the Association and the Board in the maintenance and repair of the canals and ditches which are used for the diversion and carrying of water in connection with the operation of the project and the distribution of the water therefrom.

In the event that the Trustee shall give written notice to any water purchaser that the Board is in default in its obligations under the Bonds or Indenture and that the Trustee has elected to take advantage of the assignment to it of his water purchase contract, all monies due and becoming due and payable to the Board under said water purchase contract shall be paid to the Trustee, and the Trustee in its own name shall have the sole right to exercise all of the rights and powers of the Board with respect to said water purchase contract, unless and until the Trustee shall give written notice to the water purchaser that the Board itself may resume the collection of monies and the exercise of its powers hereunder. Upon receipt of any such notice from the Trustee, or of the notice from the Board provided for in Section 6 of the water purchase contract, the water purchaser shall be protected in acting thereon in accordance with the provisions hereof and of the water purchase contract, and shall be under no duty to inquire into the causes or justifications for such notices.

Simultaneously with the execution of each water purchase contract, including the aforesaid contracts which may be made after the completion of the project, the Association agrees to enter into a subscription and pledge agreement with each person entering into a water purchase contract, such agreement to be substantially in the form attached hereto as Exhibit "B". Said agreement shall contain a subscription by the water purchaser for a number of shares of the capital stock of said Association equal to the number of acre feet of water which said water purchaser has agreed to purchase annually, and the purchase price of each of said shares of capital stock shall not exceed the sum of One (\$1.00) Dollar per share. Said agreement shall further provide for the deposit with the Association by the water purchaser of such stock as security for the obligations of such water purchaser under said agreement, and water purchase contract.

The Association shall not give its consent to the sale, transfer, pledge or other disposition of stock by any stockholder, except when such sale or transfer is to an

assignee of a water purchase contract, and then only to the extent of permitting such assignee to own one share of stock for each acre foot of water which he is obligated to purchase annually. The Association shall not issue its stock to, or take a stock subscription from, any person who has not entered into a water purchase contract with the Association and the Board for a number of acre feet of water equal to the number of shares of stock issued and to be issued to him, and who has not entered into a subscription and pledge agreement respecting all such stock.

The Association shall exercise its options to purchase its stock and shall take such other action as may be necessary to assure that its stock shall not be sold or transferred except when such sale or transfer is to an assignee of a water purchase contract, and then only to the extent of permitting such assignee to own one share of stock for each acre foot of water which he is obligated to purchase annually. The Board may request the Association to take such action as may be deemed necessary for this purpose, and the Association shall comply with every such request.

Section 5. The Association agrees that it will cause all monies due under water purchase contracts to be collected promptly and will take any and all action necessary to do so. In the event that a water purchaser shall default in the payment of any of the sums when and as same shall become due and payable under his water purchase contract, and such default shall continue for a period of 45 days or shall default in the performance of his other obligations hereunder, then and in any event, the Association may in its discretion and, upon the request of the Board, shall take any or all of the following action:

- (a) Cease and refuse to furnish water to the water purchaser until such default and all other defaults subsequently occurring shall be cured, without, however, affecting or prejudicing the right of the Association or the Board to collect all monies becoming payable by the water purchaser during the period when water is withheld (except to the extent of any revenues collected by the Board or the Association from the sale of water withheld from said water purchaser) or to collect all monies then due or thereafter accruing under said water purchase contract;
- (b) Terminate the rights of the water purchaser under his water purchase contract, without, however, affecting or prejudicing the right of the Association or the Board to collect all monies then owing by the water purchaser under said water purchase contract;
- (c) Cause the stock issued to such water purchaser to be forfeited, acquired or sold in accordance with Section 2 of the Subscription and Pledge Agreement attached hereto; provided, however, that the Association, by exercising its right to forfeit or acquire said stock or its option to purchase same at the issuing price, shall obtain the title to such stock free from any right or equity of redemption of the water purchaser; and apply the proceeds of the sale or acquisition of such stock or the payments made by the water purchaser on such stock, in the manner provided by said Section 2 of the Subscription and Pledge Agreement;
- (d) Institute and prosecute to final judgment or decree, actions or proceedings in law or in equity (1) for the collection of the sums due and unpaid under the water purchase contract, or damages for the breach thereof, and enforce any such judgment or final decree against the water purchaser, (2) for the purpose of compelling the water purchaser to observe or perform the covenants, conditions or obligations in the water purchase contract, and (3) for any other purposes which shall be deemed advisable;

provided, however, that except with the written consent of the Board and Trustee, no such water purchase contract shall be terminated unless the Association shall first obtain an agreement by some other water user or users to enter into a water purchase contract or contracts for the purchase of the privilege to the water covered by the contract desired to be terminated. Upon such termination of a water purchase contract the Association forth-

with shall enter into such water purchase contract or contracts and shall obtain a subscription and pledge agreement, all substantially in the same manner as that provided in Section 4 hereof. The Association upon terminating a person's water purchase contract shall pursue such remedies and take such action under his Subscription and Pledge Agreement as may be necessary to forfeit or acquire his stock.

The Board may make written requests of the Association to take such action and pursue such remedies as the Board deems necessary in order to collect all sums due under water purchase contract or to compel the performance by water purchasers of obligations under such contracts. The Association shall comply with every such request of the Board.

In the event that the Association or the Board shall cease and refuse to furnish water to any purchaser by reason of his default, neither the Association nor the Board shall be under any duty to such water purchaser to sell the water so withheld to any other water user or users. The taking of any action by the Association or the Board hereunder or under any water purchase contract and the exercise of any remedies conferred upon or reserved to the Association hereby or by any water purchase contract, shall not be construed to exhaust or in any manner impair the powers, rights or remedies so conferred upon the Association or the Board in the event of a subsequent default by a water purchaser or the failure to cure existing defaults or otherwise.

Section 6. In the event that from time to time, a supply of water is available from the project temporarily in excess of the amount needed and to be needed to furnish all water purchasers under contract therefor, the Association shall sell such water at the highest price obtainable, but in no event shall such waters be sold at a price less than the amount then being paid by persons under water purchase contracts.

So long as the Association shall be engaged in the distribution of water from the Project and the collection of monies due under water purchase contracts, the Board, upon the written request of the Association, shall pay to the Association annually ten (10¢) cents out of the monies collected by the Association under water purchase contracts as the annual payment for operating costs charged in connection with each acre foot of water (or proportionate share allocated thereto in case of shortage), and the Board shall withdraw monies for this purpose from the Water Fund but only out of the monies therein which were collected by the Association for said operation costs. The Association shall use monies thus paid to it solely for the purpose of paying the cost incurred by it in the distribution of the water from the Project, and any surplus remaining shall be deposited by it with the Trustee in Water Fund Series M, on December 15 of each year. In the event that the rights of the Association hereunder are terminated or that the Board has ceased to furnish water to the Association by reason of its default, the Association, upon demand by the Board, shall pay to the Trustee all monies then held by the Association pursuant to such retentions.

All monies collected by the Association under water purchase contracts or from the sale of water are hereby declared to be trust funds which (except for the sums authorized by the preceding paragraph to be retained) are to be deposited with the Trustee in the special account of the Board called "Water Fund, Series M, such monies to be held and disbursed by the Trustee in the manner provided in the Indenture. All monies deposited by the Association in said account shall be deemed payments on account of the installments or other obligations then due under this contract, or in case no sums are then due, shall be deemed deposits for the payment of the next installment or obligation thereafter to become due hereunder. Whenever the monies so deposited in said account can be applied to more than one matured installment or obligation hereunder, the Board shall have the sole right to determine on which installments or obligations the monies shall be applied.

The sums hereby required to be deposited with the Trustee by the Association shall be so deposited until all of the Bonds are fully discharged or monies sufficient therefor are deposited with the Trustee, and thereafter such sums shall be deposited with the Board.

Section 7. The amounts stated in this contract as the amounts due to the Board are to be paid by the Association in full, without deduction on account of the failure

of some of the water purchasers to pay the monies due under their water purchase contracts, and the Association agrees to take all action necessary to enable it to pay such amounts in full when due.

Section 8. The Association shall employ as Manager a competent person who shall have had experience in the distribution of water from irrigation works of similar character to the project and in the other duties which will be required of him. The selection of such person shall be subject to the approval of the Board and upon notice from the Board that the Manager is or has been unsatisfactory the Association shall as often as such notice is given, promptly terminate the employment of such unsatisfactory employee and employ one suitable to the Board.

All books, records, accounts, documents and vouchers relating to the activities of the Association shall at all times be open to the inspection of the Board and of the Trustee and to such accountants and other agents of the Board or Trustee as may from time to time be designated by either or both of them.

Section 9. In the event that the Association shall default in the payment of any of the sums when and as same shall become due and payable hereunder and such default shall continue for a period of 90 days; or in the event that the Association shall default in the due observance or performance of any of the covenants, conditions or obligations in this contract, and such default shall continue for 90 days after written notice specifying such default and requiring same to be remedied shall have been given to the Association by the Board, then and in any such event, the Board may in its discretion and upon the written request of the Trustee, shall take any or all of the following action:

- (a) Cease and refuse to furnish water to the Association until such default and all other defaults subsequently occurring shall be cured, it being understood that such action by the Board shall not affect or prejudice (except to the extent of any revenues collected by the Board from the sale of water withheld from the Association) the right of the Board to collect monies becoming due under this contract during the period when the Board withholds water from the Association in accordance with the provisions hereof or to collect any monies then or thereafter owing by the Association hereunder;
- (b) Terminate the rights of the Association under this contract, it being understood that such action shall not prejudice the right of the Board to collect all monies then owing by the Association hereunder; provided, however, that such action shall not be taken by the Board except with the consent of the Trustee;
- (c) Cause written notice to be served upon water purchasers that all payments under their respective water purchase contracts shall thereafter be made to the Board and not to the Association, unless and until they are notified to the contrary by the Board; distribute water directly to water purchasers in accordance with the provisions of water purchase contracts and collect and receive all monies due under such contracts and all other revenue from the sale of the water of the project; exercise all the rights and powers theretofore exercised by the Association with respect to the distribution of water, the collection of monies under water purchase contracts and the collection of other revenues from the sale of water from the project; exclude the Association, its agents and servants from engaging in the distribution of water from the project of taking any other action under water purchase contracts; provided, however, that the Board shall not take the action provided for in this subsection (c) unless it has ceased and refused to furnish water to the Association, or has terminated the rights of the Association under this contract as hereinabove provided;
- (d) Institute and prosecute to judgment or final decree actions or proceedings in law or in equity for the collection of the sums due and unpaid hereunder, or damages for the breach hereof, and enforce any such judgment or final decree against the Association;

- (e) Institute and prosecute to final decree such proceedings in equity as may be necessary (1) to require the Association to account for all monies collected under the water purchase contracts as a trustee under an express trust for the Board and the Trustee, and (2) to enjoin any acts or things which may be unlawful or in violation of the rights of the Board or the Trustee.

No remedy herein conferred upon or reserved to the Board is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now hereafter existing at law or in equity or by statute. The taking of any action by the Board hereunder and the exercise of any of the remedies conferred upon or reserved to the Board hereby, shall not be construed to exhaust or in any manner impair the powers, rights or remedies hereby conferred upon the Board in the event of a subsequent default, or from time to time as may be necessary.

Section 10. The Association hereby consents and agrees to the execution and delivery by the Board of the Indenture and to the assignment thereby of the interest of the Board in and to this contract and the water purchase contracts now or hereafter executed.

In the event that the Trustee shall give written notice to the Association that the Board is in default in the due observance or performance of any of the covenants, conditions or obligations in the Bonds or Indenture, and that the Trustee, has elected to take advantage of the assignment to it of this contract, all monies due and becoming due and payable to the Board hereunder shall be paid to the Trustee, and the Trustee in its own name, shall have the sole right to enforce this contract and exercise all the rights and powers of the Board with respect thereto, unless and until the Trustee shall give written notice to the Association that the Board itself may resume the collection of monies and the exercise of its powers hereunder.

Section 11. The Association hereby agrees to aid and cooperate with the Board in the maintenance and repair of the canals and ditches which are to be used for the diversion and carrying of water in connection with the operation of the project and the distribution of the water therefrom. *

Section 12. The Board reserves the right, so far as same may be consistent with the provisions of this contract, to make and amend reasonable rules and regulations with respect to the project, the operation thereof and the distribution of water. *

The Association agrees to be bound by any and all provisions of the By-Laws of the Association, now in force or hereafter adopted and approved by the Board, and that it will not adopt or approve any By-Laws or rules or regulations for the government of said Association or the stockholders thereof, unless same as first approved by the Board.

It is understood between the parties hereto that the public shall be allowed to fish and hunt in or upon the reservoirs under appropriate restrictions and regulations which shall correspond as nearly as possible with the law, rules and regulations prescribed by the State of Montana, relative to fishing and hunting, subject to such reasonable regulations as the Board may make for the protection of the project.

Section 13. This contract has been executed in triplicate, one copy being retained by the Association, and two copies by the Board which will in turn deposit one of said copies with the Trustee to whom this contract will be assigned under the Indenture as security for the Bonds. The provisions of this contract shall apply to and bind the successors and assigns of the respective parties, but the Association shall make no assignment of this contract without the written consent of the Board and the Trustee.

IN WITNESS WHEREOF, the State Water Conservation Board has caused this agreement to be executed in its corporate name by the Governor of the State of Montana and ex-officio Chairman and attested by its Secretary and the Nevada Creek Water Users' Association pursuant to authority from its Board of Directors has caused this agreement to be executed in its corporate name by its President and attested by its Secretary, and the parties hereto, have caused their respective corporate seals to be attached hereto all as of the day and year first above written.

Ex. "a"

Water Purchase Contract

This contract dated as of the day of, 193....., between the Nevada Creek Water Users' Association, a Montana corporation, hereinafter called the "Association", the State Water Conservation Board of the State of Montana duly created, authorized and acting, under and by virtue of the Laws of Montana, hereinafter called the "Board", and, hereinafter called the "water purchaser",

WITNESSETH

WHEREAS, the Board proposes to construct an irrigation and flood control project (herein called the "Project") comprising the construction of a dam across Nevada Creek, a reservoir, outlet works and spillway, including the enlarging and extending of the Hoepfner Ditch to Douglas Creek, in Powell County, Montana, in accordance with plans and specifications and estimates of cost heretofore adopted; and

WHEREAS, the Board has acquired the right to store, control and/or divert all unappropriated water of Nevada Creek and tributaries, Powell County, Montana, pursuant to Declaration filed in Book 2 of Water Rights, at Page 279, in the office of the County Clerk and Recorder of Powell County, Montana; and

WHEREAS, it is agreed by the parties hereto that the total waters to which the Board is entitled will be at least sufficient to permit the operation of said project at its full capacity so that 10,500 acre feet of water can be made available annually during the irrigation season and the purchaser recognizes the right of the Board to impound, during the non-irrigation season, all of the aforesaid waters; and

WHEREAS, the Association has heretofore entered into a contract with the Board dated whereby the Board agreed that, upon the completion of the Project, it would furnish to the Association the total available yield of storage water from the Project for certain purposes, all as more fully set forth in said contract (herein called the "water marketing contract"), a copy of which is on file at the office of the Board and the Association respectively;

NOW, THEREFORE, in consideration of the premises and of the mutual terms, covenants and conditions hereof, it is mutually covenanted and agreed as follows:

Section 1. The Association, upon the completion of the Project will furnish to the water purchaser, at the reservoir, acre feet of water annually during the irrigation season beginning May 1 and ending September 30 from the reservoir comprising the project; provided, however, that in the event that from time to time thereafter the Board shall have an inadequate amount of water from the Project to permit the furnishing of the number of acre feet of water in any year for which there are such outstanding water purchase contracts, the water purchaser in such year shall be entitled, in lieu of each acre foot of water for which he has contracted, to a share of the total water available representing the proportion that one acre foot of water annually bears to 10,500 acre feet of water annually or (but only if there are outstanding water purchase contracts for the purchase annually of more than said amount of water) to the total number of acre feet of water agreed to be purchased annually under outstanding water purchase contracts. The distribution of such proportionate shares to the water purchaser during such year shall constitute a complete performance in said year of the obligation of the Association to deliver the number of acre feet of water for which said water purchaser has contracted, and the purchaser nevertheless shall be obligated to pay the full sums due under this contract and to perform his covenants and obligations hereunder. The Association and the Board agree not to make contracts for the sale of more than 10,500 acre feet of water from the Project annually except to the extent that the storage capacity of the completed Project is in excess of said amount. So long as the right of the Association under its water marketing contract to distribute the water of the project has not been terminated, the Board shall be under no obligation to distribute water to the water purchaser hereunder, it being expressly understood that the Association only shall be so obligated.

Section 2. The water purchaser shall pay to the Association or the Board the sum of Dollars on November 1, 1939, and the sum of Dollars on November 1 of each and every year thereafter to and including November 1, 1967. On November 1, 1939, and on November 1 of each and every year thereafter during the useful life of the Project, the water purchaser also shall pay to the Association such amount as the Association shall have previously notified the water purchaser (by a written notice given at least 45 days prior to each such November 1) to be necessary for his proportionate share of the amount of the operating costs of the Project for the year following respectively each said November 1. The term "operating costs" as used herein shall include all costs of the maintenance, repair, operation, and necessary alteration of the Project, and all costs incurred by the Association or the Board in the distribution of water from the Project. The determination by the Association of the amount and necessity of such operating costs and the annual amounts payable by the water purchaser to meet such operating costs shall be final, conclusive and binding upon the parties hereto, and the amounts so determined shall be deemed a debt, payable as aforesaid, to the same extent as if the amounts were specifically enumerated herein.

Section 3. All moneys required to be paid by the water purchaser to the Association hereunder shall be paid at Helmville, Montana, or such other place as the Association shall appoint in writing. Every installment or other sum of money required to be paid hereunder, which shall remain unpaid after the same becomes due, shall bear interest at the rate of six per centum per annum.

Section 4. The water purchaser hereby agrees to be bound by any and all the terms, provisions and limitations of the Articles of Incorporation and By-Laws of the Association, including all amendments and supplements hereafter made thereto with the approval of the Board, and by the aforesaid water marketing contract between the Board and the Association as fully and completely as if the terms, conditions and limitations therein contained were herein fully written.

Section 5. In the event that the water purchaser shall default in the payment of any of the sums when and as same shall become due and payable hereunder or shall default in the performance of any other obligations hereunder, and such default shall continue for a period of 45 days, then and in any such event, the Association may in its discretion and, upon the request of the Board, shall take any or all of the following action: (a) cease and refuse to furnish water to the water purchaser until such default and all other defaults subsequently occurring shall be cured, it being agreed that the withholding of water from the water purchaser in accordance with the provisions hereof shall not affect the obligations of the water purchaser, accruing during the period when water is withheld (except to the extent of any revenues collected by the Association from the sale of water withheld from said water purchaser), or the obligations of the water purchaser then due or thereafter accruing hereunder; (b) terminate the rights of the water purchaser under this water purchase contract, it being agreed that such action shall not prejudice

Ex B " Subscription and Pledge Agreement

This agreement dated as of the.....day of....., 193....., between

....., hereinafter called the "Water purchaser", and the NEVADA CREEK WATER USERS' ASSOCIATION, a corporation duly organized and existing under and in pursuance of the laws of the State of Montana, hereinafter called the "Association",

WITNESSETH

WHEREAS, simultaneously with the execution hereof, the water purchaser has entered into a water purchase contract (herein called the "water purchase contract") with the Association and the State Water Conservation Board (herein called the "Board") for the purchase of the privilege of obtaining certain water from the Project therein described; and

WHEREAS, the water purchaser desires to subscribe for stock in the Association and to pledge said stock as security for his obligations hereunder and under his water purchase contract,

NOW THEREFORE, in consideration of the premises and of the mutual terms, covenants and conditions hereof, it is mutually covenanted and agreed as follows:

Section 1. The water purchaser hereby agrees to take, and does hereby subscribe for,.....

.....shares of the capital stock of the Association, said Association having a total authorized capital stock of Fifteen Thousand Dollars (\$15,000), divided into fifteen thousand (15,000) shares of the par value of One Dollar (\$1.00) each, and further agrees to pay to the Association the amount

ofDollars (\$.....) for said shares of stock upon call and demand by the directors of the Association. This obligation is made and entered into in conformity with the laws of Montana, the Articles of Incorporation and the By-Laws of said Association. The amount of this subscription shall not become due and shall bear no interest until such call or demand is made for payment and thereafter only such amount as is called or demanded shall be due and same shall bear interest at the rate of six per cent (6%) per annum.

Section 2. The water purchaser hereby assigns, transfers and sets over to the Association all his right, title and interest in and to the aforesaid shares of stock, said Association to have and to hold said shares of stock for its own use and benefit forever, for the purpose of securing the performance and observance by the water purchaser of the terms, covenants and conditions of this agreement, and the water purchase contract. In the event that the water purchaser is in default in the performance of any of his obligations under the water purchase contract, and such default shall continue for a period of forty-five (45) days, then and in any such event, the Association may immediately, without demand for payment, and without advertising, and without notice to the water purchaser, each and all of which is, and are hereby, expressly waived: (a) forfeit the shares of stock subscribed for, and apply the payments previously made by the water purchaser on his stock toward the payment of any sums due under his water purchase contract; or (b) acquire the absolute title to any and all of said shares of stock (free from any right or equity of redemption by the water purchaser, such right or equity of redemption being hereby expressly waived and released) by crediting the water purchaser with the par value of said stock at the time of said acquisition of absolute title; or (c) sell any or all of said shares of stock (free from any right or equity of redemption by the water purchaser, such right or equity of redemption being hereby expressly waived and released) at public or at private sale, it being expressly understood and agreed that the Association may itself be a purchaser at such sale, of the whole or any part of said shares of stock. The proceeds of any sale or acquisition (pursuant to (b) or (c) of this Section) of said stock, or any part thereof, by the Association shall be applied, so far as needed, first, toward the payment of the full indebtedness under this agreement; and, second, to the payment of any sums due under said water purchase contract; and, third, to the payment of any balance remaining to the water purchaser. In the event that the water purchaser is in default in the payment of any amount due on his subscription for said stock, the Association may forfeit the stock subscribed for in the manner provided by statute or otherwise.

Section 3. The right to vote the stock covered by this agreement at any and all meetings of the stockholders of the Association is hereby reserved to the water purchaser, and may be exercised by him unless and until said stock is purchased by the Association pursuant to its option or is sold by the Association in accordance with the provisions hereof. The water purchaser agrees to be bound by any and all provisions of the Articles of Incorporation and By-Laws of the Association, including all amendments and supplements hereafter made thereto with the approval of the Board.

Section 4. The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties hereto, but the water purchaser shall make no assignment of his right, title or interest in the stock covered by this contract until first offering said stock to the Association at the par value thereof, the Association to have the right and option to purchase said stock at the par value thereof at any time within ten (10) days from the personal service of written notice upon the Association of its intention to sell, transfer or assign its rights in the stock covered by this agreement; provided, however, that the Association shall have no such option in the event that such stock is to be sold, transferred or assigned by a water purchaser to an assignee of his water purchase contract who, after such assignment, will hold only one (1) share of stock for each acre foot of water which he is obligated to purchase annually under a water purchase contract with the Association and the Board.

IN WITNESS WHEREOF,..... has hereunto set his hand and seal, and the NEVADA CREEK WATER USERS' ASSOCIATION, pursuant to authority from its Board of Directors, has caused this Agreement to be executed in its corporate name, by its President or Vice President, and attested by its Secretary or its Assistant Secretary, and its corporate seal to be affixed hereto, all on the day and year first above written.

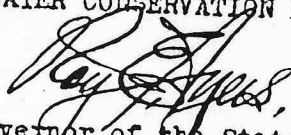
Witness to Signature of Subscriber:

Attest: *Tom J. Cotta* Secretary. NEVADA CREEK WATER USERS' ASSOCIATION (SEAL) By *J.C. Mansley* President.

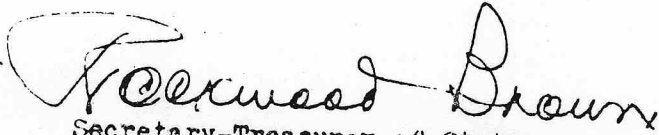
(SEAL)

STATE WATER CONSERVATION BOARD

By


Governor of the State of Montana and
ex-officio Chairman of the Board.

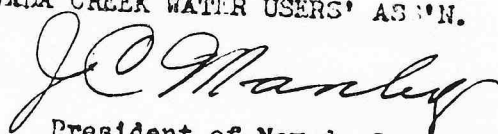
Attest:


Secretary-Treasurer of State
Water Conservation Board.


(SEAL)

NEVADA CREEK WATER USERS' ASS'N.

By


President of Nevada Creek Water
Users' Association.

Attest:


Secretary of Nevada Creek Water
Users' Association.