

ORIGINAL

Approved as to form: 3-8-62

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Belle Fourche Irrigation Project, South Dakota

SECOND AMENDATORY CONTRACT BETWEEN THE UNITED
STATES OF AMERICA AND THE BELLE FOURCHE
IRRIGATION DISTRICT, SOUTH DAKOTA

THIS SECOND AMENDATORY CONTRACT, made this 2nd
day of January, 1961, between the UNITED STATES OF AMERICA
(hereinafter called the United States), acting through the Secretary of the
Interior (hereinafter called the Secretary), and pursuant to the Federal
Reclamation Laws, and the BELLE FOURCHE IRRIGATION DISTRICT (hereinafter
called the District), an irrigation district organized and existing under
and by virtue of the laws of the State of South Dakota, with its principal
place of business and office at Newell, South Dakota;

W I T N E S S E T H :

WHEREAS, the following preliminary statements are made in
explanation:

(a) The United States and the District entered into an amendatory
payment contract (Iir-1585) on November 29, 1949, which covered the District's
payment to the United States of the costs of constructing irrigation works
on the District's lands and other purposes. Article 36 of this 1949
contract provided as follows:

"36. Whenever the Secretary shall find that an additional
water supply can be made available to the lands of the District,
or any part thereof, from the Keyhole dam and reservoir
appropriate consideration shall be given to the District water
requirements for irrigation purposes and the Secretary shall
determine to what extent the terms of this contract shall be
modified as a basis for obtaining an additional water supply."

(b) The United States and the District are agreed that an addi-
tional water supply can be made available to the District by assigning for
the District's use a portion of the space of Keyhole reservoir, with the
right of the District to store therein water which it is entitled to use
under its project water right to which its share of Keyhole storage water as
will be properly allocated to such pool, and to purchase additional
Keyhole water when available and needed by the District.

NOW, THEREFORE, in consideration of the mutual promises herein
set forth, it is agreed as follows:

1., Where used in this contract, the terms

(a) "Secretary" shall mean the Secretary of the United States Department of the Interior, or his duly authorized representative.

(b) "Federal Reclamation Laws" shall mean the Act of June 17, 1902 (32 Stat. 389), and all acts amendatory thereof and supplementary thereto, including particularly, without limitation of the foregoing, the Reclamation Project Act of 1939 (53 Stat. 1137), as amended.

(c) "Irrigation season" shall mean the period April 15th through November 30th within any year.

(d) "Year" shall mean the period January 1 through the next following December 31.

(e) "Project water" shall mean water which landowners of the District are entitled to use under South Dakota Notices of Appropriation Nos. 18874 and 18875, both dated August 5, 1905, and respectively recorded on pages 12 and 13 of Book 17, Butte County records, South Dakota.

(f) "Keyhole water" shall mean water which the United States is entitled to store in Keyhole reservoir and to dispose of under Wyoming permit 5707 Res.

(g) "1949 repayment contract" shall mean the amendatory repayment contract (Hr-1535) of November 29, 1949, between the United States and the District.

Storage and Use of Water

2. (a) The District shall have storage rights in Keyhole reservoir equal to 7.7 percent of the total active capacity of the reservoir. This percentage initially is equivalent to approximately 10,000 acre-feet of space.

(b) The District may use its Keyhole reservoir storage space to retain either project water or its 7.7 percent share of Keyhole water, or both; and such right to retain water shall include the right to hold over such water from prior years; but the total amount of water retained at any one time shall not exceed that which can be stored within 7.7 percent of the then total active capacity of Keyhole reservoir.

(c) The District shall each year be entitled to the use of 7.7 percent of Keyhole water coming into the Keyhole reservoir during that year. Such right to the use of 7.7 percent of Keyhole water for any one year shall include the right to store or to hold over all or any portion of said 7.7 percent share of Keyhole water in Keyhole reservoir within the limitations above set out in Article 2 (a) and (b).

(d) All space in Keyhole reservoir shall be operated with like priority as to storage rights; and the United States reserves the privilege

of granting to others holdover rights and of itself exercising such holdover rights as to any small space that are not inconsistent with the rights granted to the District under this contract. In determining the amount of stored water to which the District is entitled under this contract, losses incidental to storage shall be prorated equally over all water in storage; and, in determining the amount of stored water delivered, the point of measurement shall be the outlet works of Keyhole dam and reservoir. The District shall receive said stored water at the point of measurement and shall be wholly responsible for taking said water at that point and conveying, diverting, and utilizing it.

(c) While Keyhole dam and reservoir is being operated and maintained by the United States, it will operate the works to the end of rendering all the water to which the District is entitled under this contract and on such schedule of call order as shall be agreed to between the District's Board of Directors and the official in charge of the Keyhole dam and reservoir, within the capacity limits of such works and having regard for other existing rights which must be supplied through these facilities. Deliveries of stored water shall be limited at any time to the amount which can be delivered through the outlet works of the dam taking into account the requirement of passing through the reservoir water belonging to prior or coordinate rights.

(d) The District, during the term of this contract and subject to the fulfillment of all its obligations hereunder, shall have a right to its share of Keyhole water, as provided in this Article 2, for beneficial use on District lands, and, upon completion of payment of the District's construction charge obligation under this contract, such right and the District's right hereunder to the use of 7.7 percent of the active capacity of Keyhole reservoir, shall become permanent, subject to the payment of the District's operation and maintenance obligations as determined at the time the construction obligation has been met.

Keyhole Construction Charge

3. Of the reimbursable cost of the Keyhole dam and reservoir, the District shall pay to the United States the sum of \$60,000 as a Keyhole construction charge obligation. This \$60,000 Keyhole construction charge obligation shall be additional to the District's construction charge obligation under the 1940 repayment contract and will be paid in forty successive annual installments each of Fifteen Hundred Dollars (\$1,500), and each of which shall be paid one-half on or before June 30 and one-half on or before December 31, of each year beginning with the year 1968.

Keyhole Operation and Maintenance Charges

4. The District will pay 7.7 percent of the portion of the annual cost of operating and maintaining the Keyhole Dam, Reservoir and appurtenant works allocable to irrigation. Such payments, in the amounts estimated annually by the Secretary and announced in writing to the District, will

be made on or before April 1 of each year this contract is in force. After the first year's notification of operation and maintenance costs, the notifications will contain a credit or surcharge equal to the overage or deficit, as the case may be, in the amount paid the prior year and the actual cost of operation and maintenance for that year. If the United States fails to notify the District of the estimated cost of operation and maintenance prior to April 1 of any year, the prior year's estimated cost will be paid.

Additional Keyhole Water

5. (a) During the term of this contract Keyhole water additional to that accruing to the District under Article 2(c) may be requested by the District upon a deposit of \$1.25 for each acre-foot of additional water so requested. If the Secretary determines that such additional water is available when requested, he shall release the same under the conditions prescribed in Article 6.

(b) The District's annual obligation for the additional Keyhole water so released shall be computed either at the rate of \$1.25 per acre-foot measured at Keyhole Dam, or \$2.00 per acre-foot measured at the boundary line between Wyoming and South Dakota, depending upon which is the most economical to the District, as determined by the Secretary. Should the District's annual obligation be less than the amount deposited under Article 5(a), the overpayment shall be applied to the District's next annual installment under Article 3.

(c) When releasing only Keyhole water from the reservoir, all water measured at the state line will be considered released water for determining cost of water at \$2.00 per acre-foot.

(d) When releasing Keyhole water with Project water, all water measured at the state line will be considered released water and the losses will be assigned in the same proportion as the amount of each kind of water released for purposes of determining the cost of additional Keyhole water.

Manner of Release

6. Any release of Keyhole water will be made in increments of 3,000 acre-feet or more, or will be made in conjunction with a release of project water in which the total release equals 3,000 acre-feet or more; Provided, That this requirement may be modified by agreement between the Secretary and the District's Board of Directors.

Agreed Charges a General Obligation of the District

7. The District as a whole is obligated to pay to the United States the charges because hereinafter provided in this contract, notwithstanding the default in payment to the District of individual water users of assessments, tolls, or other charges levied by the District.

Levy of Assessments, Tolls, and Charges

3. (a) The District shall cause to be levied and collected all necessary assessments, tolls, and other charges, and will use all of the authority and resources of the District to meet the obligations of the District to make in full all payments to be made pursuant to this contract on or before the date such payments become due and to meet its other obligations under this contract.

(b) It is understood that the provisions of this contract will benefit lands of the District including the lands within the so-called Johnson lateral and Inlet canal areas. The District agrees to levy charges against all lands in accordance with land classification. Assessments, tolls or other charges against all lands for the purpose of paying the District's obligations hereunder shall be fixed for the different classes of land at such ratios as may be determined by the District's Board of Directors. Provided, That all assessments shall be within the percentage ratios as follows, all ratios being based on a ratio of 100 for Class 1 land:

Class 1 - 100
Class 2 - 88-92
Class 3 - 80-85
Class 4 - 48-50

Application of 1949 Repayment Contract

9. (a) The 1949 repayment contract shall continue in full force and effect.

(b) The additional obligations assumed by the parties to this second amendatory contract shall be governed by the same provisions as are stipulated in the 1949 repayment contract respecting penalties (Article 17); defaults (Article 20); general obligation (Article 21); application of payment (Article 22); the keeping of records (Article 24); access to books and records (Article 25); excess lands (Article 27); computation of costs (Article 29); rules and regulations (Article 30); liability for drouth (Article 32); assignments and successors (Article 34); and contingency on appropriations or allotments (Article 37). Such provisions and the articles containing them are incorporated in this second amendatory contract by reference and made a part hereof.

(c) The District's obligation to prepare and submit a District budget and to make assessments as provided in Article 10 of the 1949 repayment contract shall be extended to cover additionally the annual installments of the Keyhole construction charge obligation and the Keyhole operation and maintenance charges as above prescribed in Article 3 of the second amendatory contract.

Confirmation of Contract

10. The execution of this second amendatory contract shall be authorized by a vote of qualified electors of the District as provided by