

WATER PURCHASE CONTRACT

This contract dated as of the 5th day of March, 1958, between 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 the Fish and Game Commission of the State of Montana, Ravalli County Fish and Wildlife Association and Western Montana Fish and Game Association, hereinafter called the "water purchasers",

WITNESSETH

WHEREAS, the Board has constructed an irrigation and flood control project (herein called the "Project") comprising the construction of a dam and the creation of a reservoir in Ravalli County, Montana; and

WHEREAS, the Board has acquired the right to store, control and/or divert all unappropriated water of West Fork of the Bitterroot River, Ravalli County, Montana, pursuant to declaration filed in Volume 11 of Miscellaneous Records, on page 76, and amendatory declarations filed in the office of the County Clerk and Recorder of Ravalli 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 32,000 acre feet of water can be made available annually and the purchasers recognize the right of the Board to impound all of the aforesaid waters; and

WHEREAS, the water purchasers desire a continuous flow of water in the Bitterroot River in an amount sufficient to maintain fish life and it having been determined by the water purchasers that an annual release of 5,000 acre feet of storage water in quantities and at times when stream flow of the river is being depleted by irrigation diversions or during low flow periods will be sufficient to provide an adequate flow in all sections of the river to maintain fish life.

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 will furnish to the water purchasers, at the reservoir comprising the project, five thousand acre feet of water annually, 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 purchasers in such year shall be entitled, in lieu of each acre foot of water for which they have contracted, to a share of the total water available representing the proportion that one acre foot of water annually bears to 32,000 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 purchasers during such year shall constitute a complete performance in said year of the obligation of the Board to deliver the number of acre feet of water for which said water purchasers have contracted. The Board agrees not to make contracts for the sale of more than 32,000 acre feet of water from the Project annually except to the extent that the storage capacity of the Project may be increased is in excess of said amount.

Section 2. The water purchasers shall pay to the Board the sum of One hundred ten thousand four hundred dollars on April 1, 1958. On April 1, 1958, and on April 1 of each and every year thereafter during the useful life of the Project, the water purchasers also shall pay to the Board Five hundred dollars (\$500.00) for their proportionate share of the amount of the operating costs of the Project for the year following respectively each said April 1.

Section 3. All moneys required to be paid by the water purchasers to the Board hereunder shall be paid at Helena, Montana. Every 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. In the event that the water purchasers 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 Board may in its discretion take any or all of the following action: (a) cease and refuse to furnish water to the water purchasers until such default and all other defaults subsequently occurring shall be cured, it being agreed that the withholding of water from the water purchasers in accordance with the provisions hereof shall not affect the obligations of the water purchasers accruing during the period when water is withheld, or the obligations of the water purchasers then due or thereafter accruing hereunder; (b) terminate the rights of the water purchasers under this water purchase contract, it being agreed that such action shall not prejudice the right of the Board to collect all moneys then owing by the water purchasers under said water purchase contract.

Section 5. It is expressly understood that all the 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 water purchasers shall acquire no right, title or interest in the Project or such water rights. It is understood that without regard to priority in the execution of this water purchase contract, or priority in the use of water hereunder or any other reason, the water purchasers under this contract shall have no preference or priority entitling them to receive water from the Project in advance of other water purchasers who have entered into water purchase contracts for water from the Project, all such water purchasers to have an equal and ratable right to water in accordance with the respective amounts to which they are entitled under their respective water purchase contracts.

Section 6. The water purchasers agree that they will on April 1 of each year appoint and authorize one person to be their agent in handling all matters in relation to the stored water purchased hereunder, and to notify the Board in writing of such appointment. In the event a replacement of such appointee becomes necessary the water purchasers will immediately notify the Board in writing of his successor. The Board shall accept orders, (which orders shall be in writing on forms provided by the Board) only from the said appointed agent for the release of the stored water purchased hereunder in quantities and times at delivery points on the Bitterroot River designated by said agent. The Board will each year designate a person in or about Hamilton, Montana, to act as its agent for receiving such orders.

Section 7. The provisions of this contract shall apply to and bind the successors and assigns of the respective parties, but the water purchaser shall make no assignment of this contract without the written consent of the Board.

IN WITNESS WHEREOF, the State Water Conservation Board has caused this contract to be executed in its corporate name by its Vice Chairman and attested by its Secretary and Treasurer and has caused its corporate seal to be affixed hereto, and the Fish and Game Commission, State of Montana, Ravalli County Fish and Wildlife Association and Western Montana Fish and Game Association, have hereunto set their hands and seals all on the day and year first above written.

Attest:  
[Signature]  
Assistant Secretary-Treasurer

Attest:  
A. D. O'Leary  
Secretary

Attest:  
[Signature]  
Secretary

Attest:  
[Signature]  
Secretary

STATE WATER CONSERVATION BOARD  
By [Signature]  
Vice-Chairman

STATE OF MONTANA, FISH AND GAME COMMISSION  
By [Signature]  
Chairman

RAVALLI COUNTY FISH AND WILDLIFE ASSOCIATION  
By [Signature]  
President

WESTERN MONTANA FISH AND GAME ASSOCIATION  
By [Signature]  
President

WATER PURCHASERS

AMENDMENT TO WATER PURCHASE AGREEMENT

THIS AMENDMENT TO CONTRACT, dated as of the 5th day of March, 1958, between the State Water Conservation Board of the State of Montana, duly created, authorized and acting, under and by virtue of the Laws of the State of Montana, hereinafter called the "Board", and the Fish and Game Commission of the State of Montana, Ravalli County Fish and Wildlife Association and Western Montana Fish and Game Association, hereinafter called the "water Purchasers",

WITNESSETH:

WHEREAS, a water purchase contract has been submitted to the parties above named, and the Ravalli County Fish and Wildlife Association and the Western Montana Fish and Game Association, parties thereto have signed the said water purchase agreement, subject, only, to the acceptance of this amendatory contract by the other parties thereto, which they understand is acceptable and which they believe will clarify the provisions thereof.

NOW THEREFORE, it is agreed that the provisions of said contract shall be in full force and effect for all purposes excepting, only, that the following amendments shall be made thereto;

1. In paragraph Four (4) thereof, immediately preceding the "NOW, THEREFORE" the word "DETERMINED" is hereby changed to "ESTIMATED".

2. Section Four (4) thereof is hereby amended by striking out paragraph "B" thereof, to make said paragraph read as follows:

In the event that the water purchasers 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 Board may in its discretion cease and refuse to furnish water to the water purchasers until such default and all other defaults subsequently occurring shall be cured, it being agreed that the withholding of water from the water purchasers in accordance with the provisions hereof shall not affect the obligations of the water purchasers accruing during the period when water is withheld, or the obligations of the water purchasers then due or thereafter accruing hereunder.

3. Section 6 thereof is hereby amended to add thereto, immediately preceding the last sentence thereof "it being understood that

the water purchasers are entitled to the delivery of 5,000 acre feet of storage water at the confluence of the Bitterroot River and the Clarks Fork River ", to make said paragraph read as follows:

"The water purchasers agree that they will on April 1 of each year appoint and authorize one person to be their agent in handling all matters in relation to the stored water purchased hereunder, and to notify the Board in writing of such appointment. In the event a replacement of such appointee becomes necessary, the water purchasers will immediately notify the Board in writing of his successors. The Board shall accept orders, (which orders shall be in writing on forms provided by the Board) only from the said appointed agent for the release of the stored water purchased hereunder, in quantities and times at delivery points on the Bitterroot River designated by said agent, it being understood that the water purchasers are entitled to the delivery of 5,000 acre feet of storage water at the confluence of the Bitterroot River and the Clarks Fork River. The Board will each year designate a person in or about Hamilton, Montana, to act as its agent for receiving such orders.

IN WITNESS WHEREOF, the State Water Conservation Board has caused this contract to be executed in its corporate name by its Vice Chairman and attested by its Secretary and Treasurer and has caused its corporate seal to be affixed hereto, and the Fish and Game Commission, State of Montana, Ravalli County Fish and Wildlife Association and Western Montana Fish and Game Association, have hereunto set their hands and seals all on the day and year first above written.

Attest: R. J. Kitchin  
Assistant Secretary-Treasurer

STATE-WATER CONSERVATION BOARD  
By [Signature]  
Vice-Chairman

Attest: A. D. O'Leary  
Secretary

STATE OF MONTANA  
FISH AND GAME COMMISSION  
By [Signature]  
Chairman

Attest: \_\_\_\_\_  
Secretary

RAVALLI COUNTY  
FISH AND WILDLIFE ASSOCIATION  
By [Signature]  
President

Attest: \_\_\_\_\_  
Secretary

WESTERN MONTANA  
FISH AND GAME ASSOCIATION  
By [Signature]  
President

WATER PURCHASERS