MEMORANDUM

TO: Members, Colorado Water Conservation Board and Colorado River Advisory Committee.

FROM: Felix L. Sparks, Director.

SUBJECT: Proposed Contract Between Bureau of Reclamation and Various Oil Shale Companies for Water from Green Mountain Reservoir.

Early this year the Board members will recall that a discussion took place at one of our Board meetings concerning a request by various oil shale companies to obtain a contract for water from Green Mountain Reservoir. A form of contract has been furnished to us by the Bureau of Reclamation as enclosed herewith. At the present time the proposed contract is pending in the office of the Secretary of the Interior.

FLS:lk

Enclosures
CONTRACT FOR SALE OF STORAGE WATER FROM GREEN MOUNTAIN
RESERVOIR, COLORADO-BIG THOMPSON PROJECT, COLORADO

THIS CONTRACT, Made this ___ day of _____, 1965, in pursuance of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, between THE UNITED STATES OF AMERICA, hereinafter styled the United States, acting through the contracting officer, hereinafter named, and THE OIL SHALE CORPORATION, a corporation organized and existing under the laws of the State of Nevada, with its principal office in New York City, New York, SOHIO PETROLEUM COMPANY, a corporation organized and existing under the laws of the State of Ohio, with its principal office in Cleveland, Ohio, and CLEVELAND-CLIFFS IRON COMPANY, a corporation organized and existing under the laws of the State of Ohio, with its principal office in Cleveland, Ohio, hereinafter referred to as "Contractors,"

2. WITNESSETH: That for and in consideration of the mutual agreements herein contained, the parties hereto do covenant and agree as follows:

3. The United States is the owner and operator of a dam, reservoir, and powerplant in northwestern Colorado known as the "Green Mountain Dam and Powerplant," a unit of the Colorado-Big Thompson Project, constructed by the United States under the Federal Reclamation Laws; and the Contractors propose individually or with or through affiliated companies or any subsidiary or agent thereof to construct in northwestern Colorado a commercial oil shale plant or plants which will require a supply of water for successful operation; and the Contractors therefore desire to secure a certain quantity of water from the United States, for exchange or replacement purposes, to be delivered from the Green Mountain Dam and Powerplant, on the terms and conditions hereinafter set forth in this contract.

4. Until such time as the Contractors jointly request the initial delivery of water pursuant to Article 5 below, the Contractors shall pay annually to the United States an interim charge in the amount of One Thousand Dollars ($1,000.00). The initial interim charge shall be due and payable upon execution of this contract and, thereafter, the annual interim charge shall be due and payable each
successive November 1st until the Contractors request the initial delivery of water. For each full calendar month from the date of initial delivery of water pursuant to Article 5 to the following November 1st, there shall be credited on the charges due and payable by the Contractors pursuant to Article 5, an amount computed at the rate of Eighty-Three Dollars and Thirty-Three Cents ($83.33) per month.

5. When the Contractors are ready to take delivery of water under this contract, they shall forward to the Flatiron Dispatching Office of the Bureau of Reclamation at Loveland, Colorado, a request in writing showing the day, and quantity of water, the Contractors want for the initial release to be made hereunder from the Green Mountain Dam and Powerplant, together with an estimate of the total quantity of water the Contractors anticipate they will require to the following November 1st. At the same time such request is forwarded, the Contractors also shall forward to the Regional Director, Region 7, Bureau of Reclamation, Building 46, Denver Federal Center, Denver, Colorado, a check, or checks payable to the order of the United States of America, in the sum of Three Hundred Fifty-Four Dollars and Seventeen Cents ($354.17) for each calendar month from the date of initial delivery of water hereunder to the following November 1st, such payment to be credited against the charge for water to be delivered at the rate of Eight Dollars and Fifty Cents ($8.50) per acre-foot to the following November 1st.

6. Upon receipt of the request and remittance mentioned in Article 5 above, the United States will commence the initial delivery of water hereunder; and each year thereafter for a period of Forty (40) years, subject to the terms of this contract, commencing with the initial date of furnishing water, the United States will furnish to the Contractors that amount of water from storage in Green Mountain Dam and Powerplant, not to exceed 7,200 acre-feet annually as the Contractors may require.

7. Under terms and conditions mutually agreeable to the parties hereto, renewals of this contract for furnishing water shall be made for successive periods not to exceed forty (40) years each. The terms and conditions of each renewal shall be agreed upon not later than one (1) year prior to the expiration of the then existing contract.

8. The water year under this contract shall commence as of November 1st of each calendar year following the date of initial delivery hereunder and terminate on the succeeding October 31st.

9. For each water year, the Contractors shall pay a "readiness
to serve" charge payable to the United States on or before November 1st of each calendar year following the date of initial delivery hereunder. Upon payment of the "readiness to serve" charge mentioned above, the United States will reserve 500 acre-feet annually in the Green Mountain Reservoir for the Contractors' use during the ensuing water year. However, if the Contractors believe that said 500 acre-feet will not be sufficient for their needs during any water year, additional water, if physically available, not to exceed 6,700 acre-feet will from time to time during said water year, upon request of Contractors, be delivered by the United States to Contractors at the rates per acre-foot set out in Article 10 hereof, providing the Contractors order and pay for such additional water included in each request in advance. If, however, due to the proportionate sharing of water shortages, in any year as provided for in Article 14, the United States has been unable to deliver all or any part of the 6,700 acre-feet under option to the Contractors for which the Contractors have made payment, then at the option of the Contractors, the United States will either refund the excess payment as requested by the Contractors or credit it on any payments due for the succeeding water year.

10. It is agreed that the rate per acre-foot for computation of "readiness to serve" charge and the rate per acre-foot for additional water delivered as above provided shall be as follows: For the first 5-year period of this contract $8.50, for the second 5-year period $8.76, for the third 5-year period $9.02, for the fourth 5-year period $9.29, for the fifth 5-year period $9.57, for the sixth 5-year period $9.86, for the seventh 5-year period $10.16, and for the remainder of the 40-year period $10.46.

11. In addition to the estimated requirements mentioned in Articles 5 and 9 hereof, the Contractors further agree to furnish to the Flatiron Dispatching Office of the Bureau of Reclamation, a weekly schedule in advance of the Contractors' actual requirements for releases from Green Mountain Dam and Powerplant; but this weekly schedule may be varied or discontinued for any particular week upon twenty-four (24) hours advance notice to the above dispatching office.

12. The water furnished by the United States pursuant to this contract shall be used by the Contractors individually or companies with which they are affiliated or any subsidiary or agent thereof only for exchange or replacement purposes in connection with or related to the operation of their oil shale plant or plants in northwestern Colorado and no part of such water shall be sold, leased, or given away to any third party for any other use. A violation of this provision shall be cause for the immediate termination of this contract by the United States.
13. a. The water to be furnished to the Contractors will be delivered to the Blue River at the outlet works of the Green Mountain Powerplant, and will be measured at this point with equipment operated and maintained by the United States. All determinations relating to the measurement of water shall be made by the Contracting Officer hereunder, and his decisions shall be final.

b. The United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water which may be furnished to the Contractors hereunder beyond the point of delivery into the Blue River, and the Contractors shall hold the United States harmless on account of damage, or claim for damage of any nature whatsoever arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water beyond the point of delivery. This is a water service contract and confers no permanent water rights on the Contractors.

14. On account of drouth, errors in operation, or other causes, there may occur at times a shortage during any year in the quantity of water available for furnishing to the Contractors by the United States pursuant to this contract through and by means of Green Mountain Dam and Powerplant, and in no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom. In any year in which there may occur such a shortage, the United States will require all contractors for a firm water supply from the Green Mountain Dam and Powerplant to share the water shortage in direct proportion to the amount of their firm water commitments existing whenever such water shortage may occur.

15. a. If any payment required to be made to the United States is not paid when due, the Contractors shall pay a penalty of one-half of one percent per month from the date of delinquency.

b. No water shall be furnished by the United States hereunder during any period in which the Contractors are delinquent in any of the payments required of the Contractors. The withholding of the furnishing of water pursuant hereto shall in no wise reduce or modify the Contractors' obligations to the United States.

c. No waiver at any time by the United States of its rights with respect to default or any other matter arising in connection with this contract shall be deemed a waiver with respect to any subsequent default or matter. All rights of action for breach of this contract are reserved to the United States as provided in Section 3737, Revised Statutes of the United States, as amended (41 U.S.C. 15).
16. a. If the Contractors within a period of five (5) years from the date of the execution of this contract have not requested the initial delivery of water hereunder, as defined in Article 5 hereof, then, at the end of said five (5) year period, this contract shall automatically terminate without any further notice to the Contractors; PROVIDED, FURTHER, That if at any time after the initial delivery of water hereunder the Contractors shall fail to request the delivery of any water hereunder for three (3) consecutive water years, this contract shall automatically terminate at the end of said three (3) year period without any further notice to the Contractors. Upon automatic termination of this agreement under the provisions of this paragraph the Contractors shall not be liable for any payments which might otherwise accrue after the termination date, but shall not thereby be released from liability for any obligation hereunder which may have accrued prior to the date of the termination of this contract.

b. If the United States shall during the life of this contract, receive a firm offer or offers from a third party, or parties, to purchase, on a permanent basis, all, or any part of the 6,700 acre-feet of water under option to the Contractors hereunder; or, if changed conditions arise in the future, whereby the United States has a need for all or any part of said 6,700 acre-feet for use by the United States, then upon the occurrence of either contingency, and after thirty (30) days notice in writing in advance to the Contractors, the Contractors will either agree to pay each year thereafter for the extra 6,700 acre-feet under option to the Contractors hereunder, or such part thereof as the Contractors desire to retain, at the rate annually applicable; or, release to the United States so much of said 6,700 acre-feet as the Contractors do not desire to retain subject hereto and pay for, provided that such agreement to pay for or release such excess shall be effective only when and so long as a firm contract covering such excess acre-feet shall be in force, or the United States needs such water for its own use.

17. In addition to all the other terms, conditions and covenants contained within this contract, it is specifically understood and agreed by and between the parties hereto, that the rights of the Contractors hereunder are, subject to the following terms, conditions and limitations, to all intents and purposes as though set forth verbatim herein, and made a part hereof by reference, to wit:

a. All the provisions of Section 13(c) of the Boulder Canyon Project Act, approved December 21, 1928 (45 Stat. 1064); 43 U.S.C. 617 1(c);

b. The provisions of Section 14 of the Colorado River Storage
Project Act, approved April 11, 1956 (70 Stat. 105); 43 U.S.C. 620m;

c. The terms and provisions of that certain contract No. Ilr-1051, including the amendments thereof, dated July 5, 1938, between the United States of America, and the Northern Colorado Water Conservancy District of Loveland, Colorado.


18. a. Notwithstanding any other provision of this contract to the contrary, the Contracting Officer shall have the right to temporarily suspend this contract at any time upon seven (7) days advance notice in writing to the Contractors if the Contracting Officer determines that further delivery of water to the Contractors hereunder will be detrimental, injurious, or contrary to the normal operating requirements for the Colorado-Big Thompson Project, or the operation of the Green Mountain Dam and Reservoir in accordance with the Final Judgment, Final Decree and Stipulations incorporated therein in the consolidated cases of the United States of America v. The Northern Colorado Water Conservancy District, et al., Civil Nos. 2782, 5016, and 5017, in the United States District Court for the District of Colorado.

b. The Contracting Officer shall have the right to immediately cancel and terminate this contract whenever any court of competent jurisdiction shall render a final judgment to the effect that the United States has no right to deliver water under this contract; or that the delivery of water hereunder is interfering with, or is prohibited by the rights of other lawful appropriators of water from the Colorado River, or any of its tributaries.

19. If this contract is suspended or terminated at any time for any of the causes set forth in Article 18 above, and at the time of the suspension or termination the Contractors have on deposit with the United States funds which are more than sufficient to pay for any water used by the Contractors up to the date of suspension or termination, any such excess funds will be promptly refunded by the United States to the Contractors: PROVIDED, HOWEVER, if termination is for any cause other than as set forth in Article 18 above, any unused funds on hand will be retained by the United States to be applied by the United States on any damages incurred by the United States by reason of the failure of the Contractors to comply with the terms of this contract.
20. This contract shall be binding upon the successors and assigns of the parties hereto, but the Contractors shall not assign this contract, by operation of law or otherwise, or any right or benefit thereunder to another party without the advance approval in writing from the Contracting Officer. Any attempted assignment without such advance approval shall work an immediate automatic termination of this contract without any further notice to the Contractors.

21. The expenditures of any money or the performance of any work by the United States herein provided for which may require appropriations of money by Congress or the allotment of funds shall be contingent on such appropriations or allotment being made. The failure of Congress to appropriate funds, or the failure of any allotment of funds shall not, however, relieve the Contractors from any obligations under this contract, nor give the Contractors the right to terminate this contract as to any of its executory features. No liability shall accrue against the United States in case of such funds not being appropriated or allotted.

22. The Contractors warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractors for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

23. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

IN WITNESS WHEREOF, The parties hereto have affixed their signatures the day and date first above written.

THE UNITED STATES OF AMERICA

By

[Signature]
Regional Director, Region 7
Bureau of Reclamation
Contracting Officer
Attest:

__________________________
Secretary

Attest:

__________________________
Secretary

Attest:

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Secretary

THE OIL SHALE CORPORATION
By

__________________________
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setTitle}

SOHIO PETROLEUM COMPANY
By

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setTitle}

CLEVELAND-CLIFFS IRON COMPANY
By

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setTitle}