

SECOND WATER USE AGREEMENT

REPUBLIC OF SOUTH AFRICA

TREATY SERIES

No. 7/1964

Agreement between the Government of the
Republic of South Africa and the Government
of the Republic of Portugal in regard to
rivers of mutual interest and the
Cunene River Scheme

Place and date of signing: Lisbon, 13 October 1964

Date of Entry into Force: 13 October 1964

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(Translation)

LISBON, 13th October 1964

Mr. Minister,

I have the honour to inform Your Excellency that the Portuguese Government agrees with the provisions contained in the document quoted hereunder, as drafted by the Portuguese and South African delegations during the negotiations which took place in Pretoria from the 25th October to the 27th November 1963:

I. RIVERS OF MUTUAL INTEREST

The Government of the Republic of South Africa and the Government of the Republic of Portugal, recognizing the mutual advantage in collaboration in the technical and economic fields as more fully set out hereinafter and in order to promote the rational development of the water resources of the river basins which have a mutual interest for both states;

Bearing in mind that rivers are one of the main factors for the development of their territories, chiefly concerning water supply, irrigation, power generation and flood control;

And that such collaboration shall normally take the form of specific agreements preceded and based on joint studies as explained hereinafter for each one of the basins;

and that such principles of friendship and good neighbourliness, which characterize the relations between both Governments, shall lead to harmonization of interests in order to eliminate, reduce or compensate any damage which may arise from the eventual modification of the natural regime of the water flow resulting from the hydraulic works which have been or will be undertaken;

Agree to the following principles:

- (1) Adoption of the principle of 'best joint utilization' in the planning and execution, covering the development of water resources of the basins of 'common interest rivers'.

NOTE: For the purpose of explaining this item 'common interest rivers' will mean those which form the boundary between two countries (contiguous rivers) or those which cross the border of two or several countries (successive rivers), and 'best joint utilization' will mean the allocation and utilization, on an equitable basis, as between the parties of water resources with a view to achieving the optimum benefit to the states concerned, within the limits of the available water resources.

His Excellency Dr. Hilgard Muller,

Minister of Foreign Affairs of South Africa

- (2) Collaboration, in the first phase, on a purely technical basis, will chiefly take the form of:
- (a) The exchange of a wide range of hydrological and other relevant data.
 - (b) Previous mutual consultation regarding the execution of major hydraulic works affecting the interests of both states.
 - (c) Joint study, at the request of either Government of the general plans for the development of water resources of each basin, which will not bind either Government. Such studies to commence not later than three months after the presentation of the petition.
 - (d) Study, when considered advisable by either Government, in the light of the earlier technical discussion of general programmes for the execution of undertakings and respective financing, distribution of expenses, benefits and operational methods.
- (3) Negotiations, on a diplomatic level for the conclusion of an agreement or agreements in respect of a particular basin or particular basins if in the light of the earlier technical discussions, this is considered mutually advantageous.

II. CUNENE RIVER

(1) *Diversion of water for use in Ovamboland*

The question of principle having been settled the South African authorities must now submit a specific plan (including site, small dam, etc) for the diversion and pumping of water from the Cunene. This plan will then be referred to the Portuguese Government for final approval.

(2) *Hydro-electric power from Matala*

The Portuguese delegation intimated that they are in favour of supplying power from Matala for utilization in South West Africa. There would however have to be further discussions regarding practical arrangements in connection with the project.

III. MATALA SCHEME

Increasing of storage

The Portuguese authorities plan to increase, in a first phase, the storage capacity above Matala to approximately 1 200 million cubic metres. This task would take approximately two years from the time regulated minimum flow downstream would be above 40 cubic metres per second.

(Since an increase of the regulated flow would eventually be required for power production at Ruacana, further storage capacity would have to be provided in the area decided upon by the Governments to ensure the additional minimum flow.)

Power line

The Portuguese authorities expect to be able to build the required power line (150 Kilovolts) from Matala to the border of South West Africa in 18 months to two years.

Extra Generating Power at Matala

The Portuguese authorities plan to install a third hydroelectric group at Matala, thus bringing the total expected production of power to 110 million Kilowatt hours per annum. In 1966, 90 million Kilowatt hours could probably be supplied for utilization in south West Africa of which 72 million kilowatt hours would be permanent and 18 million seasonal.

Finance

The Portuguese authorities estimate the financial requirements for the scheme as follows:-

- (a) *Power line*-100,000 Contos or approximately R2½ million.
Period of loan: 15 years
- (b) *Third Turbo-generator*: (17,000 K.V.A.) 30,000 Contos or approximately R750.000.
Period: 15 years
- (c) *Dam*: 200,000 Contos or approximately R5 million.
Period: 20 years

Provision of Finance

The Portuguese authorities hope that the total amount of money would be made available from South African sources. In the case of the power line and the additional group, this would be on the basis of a loan. In the case of the dam there are two possibilities, namely, a loan for the full amount or a part-contribution by South Africa plus a loan for the balance, South Africa's part-contribution being determined by the direct benefits accruing from the building of the dam. In the opinion of the Portuguese delegation this should be about 50 per cent. (Without a contribution by South Africa the Portuguese Government cannot necessarily guarantee the minimum flow referred to in Paragraph III).

On the understanding that the scheme for generating power in the Ruacana area will be proceeded with as soon as possible the Government of the Republic of South Africa will be prepared to finance the proposed works on the conditions indicated above. In the case of the dam the South African Government will contribute 50 per cent as its share in the dam and the balance will be on a loan basis. The interest rate of the capital requirements would be 5 per cent.

The price of the power at the South Africa border will be 0,5 cent per unit subject to

- (i) the South African Government buying 90 million Kilowatt hours per year (a 5 per cent differential will be allowed);
- (ii) the actual cost of the project (the power line, the third turbo-generator and the dam) which can be examined by the engineering personnel of both parties, not exceeding the estimates as given above, by more than 10 per cent. In the event of the inevitability of such an increase any increase in the price of the power will be subject to negotiations on the basis of the price stipulated above relative to the estimates.

It is agreed in principle that after the redemption of the capital cost the cost of the power at the border would be reduced. The situation would be similarly re-assessed after the repayment of the cost of the building of the dam.

IV. HYDRO-ELECTRIC SCHEME ON CUNENE RIVER

- (a) It being in principle understood that a power generating station will be built probably on the South African side of the boundary in the vicinity of Ruacana, both parties will proceed with the study of the technical aspects involved. This will involve the building of a storage dam above Ruacana besides that which the Portuguese Government intends building upstream from Matala to obtain further regulation of the flow of the Cunene River in order to obtain maximum regulation for the power station at Ruacana. The site of this dam will be decided after discussion between the two Governments and examination of the economic factors involved. The Portuguese authorities will make use of their own Engineering Services. The South African Government will at its expense, appoint a firm of Consulting Engineers.

The two engineering groups will:

- (i) Co-operate in making a preliminary study of the hydro-electric possibilities of the Cunene River (the South African group will concentrate on the Ruacana area); and
 - (ii) Suggest to their Governments lists of priorities and plans for execution.
- (b) Thereafter, final action will be subject to agreement by the Governments.
- (c) As regards the mechanism for operating the scheme it was agreed that the possibility of appointing a concessionaire should be explored."

Should the Government of the Republic of South Africa agree with the abovementioned provision, this Note and Your Excellency's affirmative reply of today's date and in equivalent terms shall constitute an Agreement between our Governments on the matter.

I avail myself of this opportunity, Mr.

Minister, to renew the expression of my highest esteem.

(Sgd.) FRANCO NOGUEIRA
MINISTER OF FOREIGN AFFAIRS
OF PORTUGAL

AT

**THE EMBASSY OF THE REPUBLIC
OF SOUTH AFRICA****Avenida Angonio Augusto de Aguiar 23-5°
LISBON****13th October, 1964**

Your Excellency,

I have the honour to refer to Your Excellency's Note of today's date which, when translated into English, reads as follows:

"I have the honour to inform Your Excellency that the Portuguese Government agrees with the provisions contained in the document quoted hereunder, as drafted by the South African and Portuguese delegations during the negotiations which took place in Pretoria from the 25th to the 27th November 1963:

I. RIVERS OF MUTUAL INTEREST

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Bearing in mind that rivers are one of the main factors for the development of their territories, chiefly concerning water supply, irrigation, power generation and flood control:

And that such collaboration shall normally take the form of specific agreements preceded and based on joint studies as explained hereinafter for each one of the basins:

And that the principles of friendship and good neighbourliness, which characterize the relations between both Governments, shall lead to harmonization of interests in order to eliminate, reduce or compensate any damage which may arise from the eventual modification of the natural regime of the water flow resulting from the hydraulic works have been or will be undertaken:

His Excellency Dr Alberto Franco Nogueira,
Minister of Foreign Affairs of the
Republic of Portugal,
LISBON.

Agree to the following principles:

- (1) Adoption of the principle of "best joint utilization in the planning and execution, covering the development of water resources of the basins of common interest rivers".

NOTE: For the purpose of explaining this item 'common interests rivers' will mean those which form the boundary between two countries (contiguous rivers) or those which cross the border of two or several countries (successive rivers), and 'best joint

utilization' will mean the allocation and utilization, on an equitable basis, as between the parties, of water resources with a view to achieving the optimum benefit to the states concerned, within the limits of the available water resources.

- (2) Collaboration, in the first phase, on a purely technical basis, will chiefly take the form of:
- (a) The exchange of a wide range of hydrological and other relevant data.
 - (b) Previous mutual consultations regarding the execution of major hydraulic works affecting the interests of both states.
 - (c) Joint study, at the request of either Government of the general plans for the development of water resources of each basin, which will not bind either Government. Such studies to commence not later than three months after the presentation of the petition.
 - (d) Study, when considered advisable by either Government, in the light of the earlier technical discussion of general programmes for the execution of undertakings and respective financing, distribution of expenses, benefits and operational methods.
- (3) Negotiations on a diplomatic level for the conclusion of an agreement or agreements in respect of a particular basin or particular basins if in the light of the earlier technical discussions this is considered mutually advantageous.

II. CUNENE RIVER

(1) *Diversion of water for use in Ovamboland*

The question of principle having been settled the South African authorities must now submit a specific plan (including site, small dam, etc) for the diversion and pumping of water from the Cunene. This plan will then be referred to the Portuguese Government for final approval.

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III. MATALA SCHEME

Increasing of storage

The Portuguese authorities plan to increase in a first phase, the storage capacity above Matala to approximately 1 200 million cubic metres. This task would take approximately two years from the time construction is commenced. With the aid of this project the regulated minimum flow downstream would be about 40 cubic metres per second.

(Since an increase of the regulated flow would eventually be required for power production at Ruacana, further storage capacity would have to be provided in the area decided upon by the Governments to ensure the additional minimum flow.)

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On the understanding that the scheme for generating power in the Ruacana area will be proceeded with as soon as possible the Government of the Republic of South Africa will be prepared to finance the proposed works on the conditions indicated above. In the case of the dam the South African Government will contribute 50 per cent as its share in the dam and the balance will be on a loan basis. The interest rate of the capital requirements would be 5 per cent.

The price of the power at the South Africa border will be 0,5 cent per unit subject to

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This Note and Your Excellency's Note of today's date quoted above shall constitute an Agreement between our two Governments on the matter.

Please accept, Your Excellency, the assurance of my highest consideration.

(Sgd.) HILGARD MULLER
MINISTER OF FOREIGN AFFAIRS OF
THE REPUBLIC OF SOUTH AFRICA