

No. 14453

**UNITED NATIONS (UNITED NATIONS CAPITAL
DEVELOPMENT FUND)
and
NIGER**

**Grant Agreement (with annexes). Signed at Niamey on 2
and 10 December 1975**

Authentic text: French.

Registered ex officio on 10 December 1975.

**ORGANISATION DES NATIONS UNIES
(FONDS D'ÉQUIPEMENT DES NATIONS UNIES)
et
NIGER**

**Accord de don (avec annexes). Signé à Niamey les 2 et 10 dé-
cembre 1975**

Texte authentique : français.

Enregistré d'office le 10 décembre 1975.

[TRANSLATION — TRADUCTION]

GRANT AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE
REPUBLIC OF THE NIGER (hereinafter called the Government")
AND THE UNITED NATIONS CAPITAL DEVELOPMENT FUND
(hereinafter called "UNCDF")

Project number: NER 74/C31

Project title: Deep wells in the Tahoua region

Approved:

[DJERMAKOYE ADAMOU]

For the Government

Date: 2 December 1975

[ALEXANDER ROTIVAL]

For UNCDF

Date: 10 December 1975

Article I. THE GRANT

Section 1.01. UNCDF agrees to make a grant (hereinafter called "the Grant") available to the Government, on the terms and conditions set forth or referred to in this Agreement, in the amount of four hundred forty-four thousand United States dollars (\$US444,000), as a financial contribution to the Project (hereinafter called "the Project") described in annex I to this Agreement.

Section 1.02. (a) UNCDF shall open a grant account (hereinafter called "the Grant Account") on its books in the name of the Government and shall credit thereto the amount of the Grant.

(b) The table below sets forth the categories of items of expenditure for the Project to be financed out of the funds obtained from the Grant and fixes the amounts allocated to each category.

<i>Category</i>	<i>Amount of the Grant allocated (in US dollars)</i>
1. Well-sinking	\$293,000
2. Well-sinking equipment (vehicles, rigs and tools)	\$111,000
3. Spare parts (including drilling tools and diamond bit drills) for a mobile drill financed by UNICEF	\$ 40,000
	TOTAL \$444,000

(c) The disbursements from the Grant Account and the administration of the Project shall be made or conducted in accordance with the conditions and pro-

¹ Came into force on 10 December 1975, the date on which the last signature had been affixed, in accordance with section 6.01.

cedures and by the organizations set forth or referred to in an Administration Agreement, marked annex II, which is attached to this Agreement. The pre-conditions to any disbursement from the Grant Account are set forth in annex II, it being agreed that UNCDF may, by notice to the Government, declare this Agreement to be null and void if the said pre-conditions are not satisfied on or before 31 March 1976.

(d) Notwithstanding the provisions of paragraph (c) of this section, no disbursements shall be made in respect of:

- (i) any expenditures incurred prior to the date of this Agreement;
- (ii) payments for taxes and other charges, imposed under the laws of the State or laws in effect in its territories, on goods or services or on the importation, manufacture, purchase or supply thereof.

Section 1.03. If UNCDF has reasonably determined that the portion of the Grant allocated to any category will be insufficient to finance the expenditures in that category, it may, by notice to the Government, reallocate to that category any amounts which have been allocated to another category but, in its opinion, are not needed to meet other expenditures.

Section 1.04. If UNCDF has reasonably determined that the purchase of any goods and services in any category is inconsistent with the procedures set forth or referred to in this Agreement, no expenditures incurred to pay for such goods or services shall be financed through the Grant, and UNCDF may, without prejudice to any other right, power or remedy available to it under the Grant Agreement, cancel by notice to the Government such a portion of the Grant as in the reasonable opinion of UNCDF represents the amount of the expenditures which might otherwise have been financed out of the funds obtained from the Grant.

Section 1.05. UNCDF may, by notice to the Government, terminate the right of the Government to withdraw from the Grant Account any amount not disbursed by 31 March 1977, or by any other date which may be agreed upon by the Government and UNCDF.

Section 1.06. Before UNCDF may invoke the provisions of sections 1.03, 1.04 and 1.05 above, UNCDF and the Government must consult together in a spirit of cooperation and mutual understanding with a view to resolving any problems.

Article II. GENERAL PROVISIONS CONCERNING THE EXECUTION OF THE PROJECT

Section 2.01. The Government shall execute the Project or, if another entity is designated for that purpose either in this Agreement or in the annex hereto, have the Project executed by the said entity with due diligence and efficiency and in conformity with appropriate administrative, technical and financial practices. It shall provide, as needed, all funds, facilities, services and other resources required for the execution of the Project.

Section 2.02. (a) Contracts for goods and services required for the execution of the Project and to be financed out of the funds obtained from the Grant shall be awarded according to the procedures set out in the model Administrative Agreement, marked annex II, attached to this Agreement.

(b) UNCDF may, in agreement with the Government, take steps to ensure that the Government receives such assistance in the purchase of goods and services required for the execution of the Project, as is consistent with UNCDF policy.

Section 2.03. Unless the Government and UNCDF decide otherwise, the Government shall ensure that all goods and services financed out of the funds obtained from the Grant are allocated solely to the execution of the Project.

Section 2.04. The Government undertakes to insure, or to make adequate provision for the insurance of, imported goods financed through the Grant against all risks arising from the purchase of such goods and their transport and delivery to the place of use or installation. Any compensation due under such insurance shall be payable in a currency which the Government can use freely to replace or repair such goods.

Section 2.05. The Government shall:

- (a) keep the records needed to follow the progress of the Project (including the cost of execution) and to identify the goods and services financed through the Grant and justify their use for the Project;
- (b) have such records audited every year and transmit them to UNCDF, together with the report of the audit, not later than six months after the end of the Government's financial year;
- (c) give UNCDF representatives every opportunity to visit the facilities and construction sites included in the Project or necessary for its execution and to inspect the goods financed out of the funds obtained from the Grant and any relevant records and documents; and
- (d) provide UNCDF with all such information as the latter may reasonably request concerning the Project, expenditures made through the Grant and goods and services financed out of the funds obtained from it.

Section 2.06. Unless the Government and UNCDF decide otherwise, the Government shall not create, or permit to be created, any charge, mortgage, pledge, surety or priority right of any kind on goods financed through the Grant, except in the case of surety for the vendor granted at the time of purchase of such goods as a guarantee of payment.

Article III. CO-OPERATION AND INFORMATION

Section 3.01. CO-OPERATION AND INFORMATION. (a) The Government and UNCDF shall co-operate fully to ensure that the purposes of the Grant are achieved. To that end, the Government and UNCDF shall, at the request of either of them:

- (i) exchange views through their representatives on the progress of the Project, the benefits deriving therefrom, the performance of their respective obligations under this Agreement and other matters relating to the purposes of the Grant; and
- (ii) provide each other with all such information as either Party may reasonably request on the progress of the Project, the benefits deriving therefrom and the general status of the Grant.

(b) The Government and UNCDF shall inform each other as soon as possible of any circumstance which interferes or threatens to interfere with the progress of the Project, the achievement of the purposes of the Grant or the performance by either Party of its obligations under this Agreement.

(c) After completion of the Project, the Government shall make available to UNCDF all such information as the latter may reasonably request on the benefits deriving from the Project, including information which UNCDF may need in order to evaluate the Project or its assistance to the Government.

Article IV. SUSPENSION OR TERMINATION OF ASSISTANCE

Section 4.01. UNCDF may, by notice in writing to the Government, suspend its assistance under this Agreement if, in its judgement, any circumstance arises which

interferes or threatens to interfere with the successful completion of the Project and the achievement of its purposes. UNCDF may, by the same notice in writing or by a subsequent notice, indicate the conditions under which it would be prepared to resume its assistance under this Agreement. The suspension of assistance shall continue until those conditions are accepted by the Government and UNCDF gives notice in writing to the Government that it is prepared to resume its assistance under this Agreement.

Section 4.02. If any of the situations referred to in section 4.01 arises and continues for a period of 30 days after UNCDF has given notice thereof to the Government, UNCDF may, at any time thereafter while the situation continues, terminate its assistance under this Agreement by notice in writing to the Government and demand that the Government should reimburse to it the portion of the Grant disbursed from the Grant Account. The Government shall reimburse that amount to UNCDF as soon as possible after receipt of the demand.

Section 4.03. The provisions of this article shall be without prejudice to any other rights or remedies available to UNCDF in the circumstances under the laws in force in the territory of the Government, under international conventions to which the Government is a signatory or, failing that, under general principles of law.

Section 4.04. No delay or omission on the part of UNCDF in exercising any right or remedy under this Agreement shall be construed as a waiver thereof.

Section 4.05. Before UNCDF may invoke the provisions of sections 4.01 and 4.02 above, UNCDF and the Government must consult together in a spirit of co-operation and mutual understanding with a view to resolving any problems.

Article V. INTERPRETATION AND SETTLEMENT OF DISPUTES

Section 5.01. The provisions of this Agreement shall be interpreted in accordance with the relevant resolutions and decisions of the appropriate organs of the United Nations, and any relevant matter for which no provision is made in this Agreement shall be settled by the Parties in accordance with those resolutions and decisions, each Party giving full and sympathetic consideration to any proposal put forward by the other Party under this section.

Section 5.02. Any dispute between the Government and UNCDF which arises out of or relates to the provisions of this Agreement and which is not settled by negotiations or another agreed method of settlement shall be submitted to arbitration at the request of either Party. Each Party shall appoint an arbitrator, and the two arbitrators thus designated shall appoint a third arbitrator, who shall be the chairman of the arbitral tribunal. If, within 30 days of the request for arbitration, either Party has failed to appoint an arbitrator or if, within 15 days of the appointment of the two arbitrators, the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint the necessary arbitrator. The arbitration procedure shall be established by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the grounds on which it is based and shall be accepted as binding by the Parties to the dispute.

Article VI. DATE OF ENTRY INTO FORCE; TERMINATION

Section 6.01. This Agreement shall enter into force on the date on which the last Party signs it.

Section 6.02. The obligations entered into by the Parties under this Agreement shall terminate exactly three years after the date set forth in section 1.05 of this

Agreement, or three years after any other date agreed upon by the Government and UNCDF in accordance with the provisions of that section.

Article VII. REPRESENTATIVES OF THE PARTIES; ADDRESSES

Section 7.01. The Minister for Foreign Affairs and Co-operation is hereby designated as the representative of the Government responsible for taking on behalf of the Government any action required or permitted under this Agreement.

Section 7.02. UNCDF may, by notice to the Government, designate one or more persons as UNCDF representative responsible for receiving any documentation to be furnished to UNCDF, or for deciding on any action which UNCDF is required or permitted to take in accordance with the terms of the Agreement.

Section 7.03. The following addresses should be used for transmitting any notice or request required or permitted under this Agreement.

For the Government:

The Minister for Foreign Affairs and Co-operation
Niamey, Niger

For UNCDF:

United Nations Capital Development Fund
c/o Resident Representative of the United Nations Development Programme
Niamey, Niger

IN WITNESS WHEREOF the Parties to this Agreement, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names and on the respective dates indicated above.

A N N E X I

PROJECT DESCRIPTION

The Upper Maggia and Keita valleys in the Tahoua region suffered tremendous losses of human life as well as the loss of more than 50 per cent of their livestock (2.4 million head of livestock of all kinds) during the drought. This Project is a pilot project which involves sinking 20 deep wells in the region with a view to relieving its immediate needs. At the same time, the Project will serve to gather information on the region's hydro-geological characteristics and on the type of well best suited to local conditions, as well as the data needed to improve the management of water sources and livestock herds. Such information will be available to all those multilateral and bilateral organizations which are assisting in the sinking of some 175 new wells in the Tahoua region, with a view to increasing the existing number of wells, which at present includes 17 deep wells and 705 shallow wells.

UNCDF financing will be used for well-sinking (\$293,000), drilling rigs, tools and vehicles (\$111,000) and drilling tools, spare parts and diamond bit drills for a mobile drill financed by UNICEF.

A N N E X II

ADMINISTRATION AGREEMENT

The purpose of this Administration Agreement is to set forth the procedures for executing the Grant Agreement of by specifying the respective respon-

sibilities of the Office d'études des eaux du sous-sol (OFEDES) (Office of Ground-water Studies) and the Resident Representative of the United Nations Development Programme (UNDP) (hereinafter called "the Representative").

A. Responsibility of the Representative

1. The Representative shall, as soon as the pre-conditions set forth in section C below are fulfilled, make available to OFEDES the sum of \$293,000. Any disbursement by OFEDES from that amount shall be duly certified by a responsible OFEDES representative, and the certification shall be submitted to the Representative. The Representative's consent shall be required for any disbursement equivalent to 10 per cent or more of the total amount allocated for well-sinking (\$293,000).

2. The Representative shall be responsible for choosing the method by which drilling rigs, tools and vehicles (\$111,000) are supplied and drilling tools, diamond bit drills and spare parts (\$40,000) are purchased. Such equipment shall be purchased either direct by UNDP or by OFEDES in accordance with its normal supply regulations and procedures. In the latter case, the Representative shall make the sum of \$151,000 available to OFEDES once the equipment suppliers have been chosen. If UNDP obtains the equipment direct, the Representative shall make the corresponding payments direct. He shall choose the method of supply to be used as soon as possible and inform OFEDES thereof.

B. Responsibility of OFEDES

1. OFEDES shall be responsible for executing the pilot project involving the sinking of 20 deep wells in the Tahoua region. In addition, it shall be responsible for gathering information on the region's hydro-geological characteristics and on the type of well best suited to local conditions, as well as the data needed to improve the management of water sources and livestock herds. OFEDES shall submit such information in the form of a technical report, which will be available to all the multilateral and bilateral organizations involved in the sinking of new wells in the Tahoua region. OFEDES shall use for the Project the mobile drill financed by UNICEF.

2. OFEDES shall be responsible for ensuring that the pre-conditions set forth in section C below are fulfilled.

3. OFEDES shall provide the Representative with the following documents:

- (a) in respect of its purchases of well-sinking and other equipment, OFEDES shall submit to the Representative the corresponding invoices, together with Certificates of Conformity, a model of which is attached hereto, and shall provide him, within 30 days after the end of each half-year, with itemized statements of all purchases made during the preceding half-year;
- (b) within 30 days after the end of each half-year, a report on every well completed during the preceding half-year;
- (c) within 30 days after the end of each calendar year for the two years following completion of the well-sinking programme, a report on the functioning of each well completed under the Project, indicating the volume of water obtained from each well and its state of repair;
- (d) within 90 days after completion of the Project, a copy, in the form of a technical report, of all information gathered during the execution of the Project concerning the region's hydro-geological characteristics, the type of well best suited to local conditions and the way in which water sources and livestock herds might best be managed.

C. Pre-conditions

The pre-conditions for any disbursement out of the funds obtained from the Grant, whose fulfilment must be confirmed by the Representative, are as follows:

1. that the Government has submitted the following documents to the Representative for his prior approval: a statement of the sites chosen for the 20 wells; the well-sinking pro-

- gramme; the programme for purchases of well-sinking equipment; the programme for purchases of other equipment;
2. that the Government has reviewed the prototype of the deep well currently proposed for the Project and has confirmed which design is preferred;
 3. that, in view of the Tahoua region's water-bearing characteristics and the risks of their being reduced, the Government has consulted with the Representative concerning the advisability of sinking 195 wells in that region;
 4. that the technical assistance required to verify the effectiveness of the currently envisaged well prototype and to design a new type of well, if required, is available as part of UNDP Project NER/73/007;
 5. that the expertise required to ensure proper management of the region's water resources and livestock is available for the Project.

CERTIFICATE OF CONFORMITY

I, the undersigned (insert title of signer), of the Office d'études des eaux du sous-sol (OFEDES) (Office of Ground-water Studies), hereby certify that the purchase made by OFEDES, for which invoices are attached, using funds provided by the United Nations Capital Development Fund, was made in strict conformity with normal OFEDES supply regulations and procedures.

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(Signature and date)
