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APR 16 2003

Department of Water Resources

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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase Nos. 65-11412 and 65-11412A
	)	
Case No. 39576	)	UNITED STATES' REPLY TO
	)	EMMETT IRRIGATION DISTRICT'S
	)	RESPONSE TO UNITED STATES'
	)	MOTION FOR SUMMARY JUDGMENT
_____	)	

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Introduction

This is the United States' Reply to the Emmett Irrigation District's ("EID's") ***Response to United States' Motion for Summary Judgment*** ("EID's Response Brief"). This reply begins with a brief clarification of certain factual issues addressed by EID and then responds to EID's arguments by establishing that (1) the United States, rather than EID, is the beneficial user of the water rights at issue in this subcase and (2) that the water rights are appurtenant to facilities owned by the United States, rather than the fields irrigated by EID's members.

EID does not dispute that the United States operates the hydro-pumps and thus physically applies the water at issue in this subcase to use. Instead, EID offers the novel theory that it should be awarded the water rights because the United States would not be using the hydro-pump water but for EID's irrigation. As will be discussed below, that theory is not only unsupported, but also would require reversal of consistent practice in the SRBA awarding water rights to entities generating hydro-power; and even, taken to its logical extreme, irrigators. EID's argument that the United States is not the beneficial user, also relies on authority that is simply inapposite while ignoring an Idaho Supreme Court decision clearly declaring the use made by the United States to be beneficial.

EID's appurtenance argument is equally unsupportable. Accepting EID's argument would require this Court to ignore the plain terms of I.C. § 42-101 which makes a water right appurtenant to the thing to which the water is necessarily applied—the hydro-pumps in this case.

As has been established in prior briefs and is reiterated below, the United States has applied water to beneficial use in generating power to operate the hydro-pumps located at

Black Canyon Dam. Accordingly, the United States must be awarded the water right necessary for the operation of the hydro-pumps.

Statement of Facts

The United States agrees with Emmett Irrigation District that the facts of this subcase are not substantially in dispute and that this subcase may be resolved as a matter of law. Nonetheless, EID's brief offers some factual assertions which require clarification.

EID characterizes the United States' statement that EID receives water diverted at Black Canyon Dam through a Warren Act contract as "not entirely accurate" because EID obtains water through water rights which predate the construction of Black Canyon Dam and through contracts for storage water from Cascade and Deadwood Reservoirs. EID Response at 4. Nonetheless, the majority of EID's irrigation surface water rights and contract storage water delivered to north side canal is in fact diverted at Black Canyon Dam through the hydro-pumps pursuant to a Warren Act contract.^{1/}

In any event, the United States' opening brief acknowledged that EID has irrigation water rights and had been irrigating prior to the construction of Black Canyon Dam. Memorandum in Support of the United States' Motion for Summary Judgment at 3-6 ("U.S. Memo in Support"). EID objects to the United States referring to those water rights as "not at

^{1/} The 1921 Contract expressly acknowledged it was done pursuant to the Warren Act: "THIS AGREEMENT, made this 18 day of November, 1921, ... under the provisions of the act of June 17, 1902 (32 Stat., 388) [Reclamation Act], and acts amendatory thereof ... particularly sections 2 and 3 of the act of February 21, 1911 (36 Stat., 925) [Warren Act]." 1921 Contract at 1. The 1955 Contract states that it was executed pursuant to the federal reclamation laws. 1955 Contract at ¶ 1. The Warren Act is the authority which allows Carey Act irrigation districts (such as the Emmett Irrigation District) to contract for use of facilities constructed under the Reclamation Act. Warren Act, Pub. L. 61-406, 36 Stat. 925 (1911).

issue in this case.” EID Response at 5. Yet EID concedes that the validity of those rights is not before the court. *Id.* EID apparently believes those rights are somehow “at issue” in this case because “the only way that the District can ensure the perpetual use of the water right to drive the hydro pumps, for that purpose [delivering irrigation water], is to be decreed the owner of that water right.” *Id.*

That statement is simply incorrect. EID’s interests in the hydro-power water are fully protected by the perpetual contract between the United States and EID. Indeed, it is that contract—and only that contract—that can protect EID’s ability to continue to have water delivered via the hydro-pumps.² Even if EID were decreed the water rights used to operate the hydro-pumps, absent a contract they would have no ability to use the pumps and would have to develop some other means of delivering their irrigation water.

EID’s final factual quibble is with the United States’ description of the Payette Adjudication. The United States agrees that the Payette proceedings involving the hydro-pump water rights are not binding on this Court. The United States also has acknowledged that it filed its claims in the Payette Adjudication after being prompted to do so by the District. *See* U.S. Memo in Support at 13. Both the United States and the District had the opportunity to claim

² EID claims that “[a]t this time, use of the pumps [*i.e.*, hydro-pumps] is the only way to ensure that the District’s north-side landowners obtain irrigation water.” EID Response Brief at 5. While it is true that use of the hydro-pumps to deliver water into the North Side Canal appears to be the most efficient means of delivering the water, it is not the *only* means. Currently, EID operates four electric pumps which draw water out of the pool behind Black Canyon Dam and deposit it in the North Side Canal. *See* Affidavit of Steven Jarsky, filed concurrently with the United States’ Response to Emmett Irrigation District’s Motion for Summary Judgment and memorandum in Support (“U.S. Response Brief”). It is certainly possible to replace the existing electrical pumping facility with a much larger facility that would be capable of delivering all of the irrigation water rights to the north side landowners.

ownership of the hydro-pump water rights in the Payette Adjudication. The District failed to assert its purported ownership interest. Instead, it urged the United States to claim the water. EID recognized then that the United States is the appropriate owner of the hydro-pump water rights. As is shown below, this court should do so now.

Argument

I. THE UNITED STATES IS THE BENEFICIAL USER OF THE CLAIMED WATER AND THEREFORE HAS APPROPRIATED A WATER RIGHT PURSUANT TO IDAHO LAW.

At the time Black Canyon Dam was constructed, water rights were established under Idaho law by diverting water and applying it to beneficial use. *See Nielson v. Parker*, 19 Idaho 727, 115 P. 488 (1911); *Sandpoint Co. v. Panhandle Co.*, 11 Idaho 405, 83 P. 347 (1905). EID does not dispute that the United States physically diverts the water, runs it through the hydro-pumps, and generates power to deliver water via the pumps. Nonetheless, EID argues that this Court must consider EID the beneficial user of the water because the United States would not be beneficially using water to operate the hydro-pumps, but for its contractual obligation to meet EID's demand for irrigation water. EID offers no authority actually applying such a "but for" test.

There is good reason why this Court should not be the first to adopt EID's purported test: the inquiry EID is urging has no logical end. For instance, Idaho Power would not use water for hydroelectric purposes but for the demands of its customers for electricity. Yet Idaho Power is routinely awarded water rights in the SRBA.^{3/} *See e.g.*, partial decrees in 36-

^{3/} In awarding hydroelectric water rights to the generator of the electricity, the SRBA is following the practice throughout the west. *See e.g. Public Utility District No. 1 of Pend Oreille County v. State, Dept. of Ecology*, 51 P.3d 744 (Wash. 2002); *Board of County Commissioners*

02013, 36-02018, 36-02026, 65-02232, and 65-12096. Taken to its logical extreme, EID's argument would deprive irrigators of their water rights because irrigators are no different than hydropower users—absent demand for their crops they would not be using water for irrigation.

The reason both Idaho Power and irrigators are routinely awarded water rights is simple: they have appropriated water by applying it to beneficial use. The United States is no different. As has been established in prior briefs and is reiterated below, the United States has applied water to beneficial use in operating the hydro-pumps and therefore must be awarded the water right necessary for the operation of the hydro-pumps.

A. Using Water to Power the Hydro-Pumps is a Beneficial Use.

EID apparently disputes that the use of water to power the hydro-pumps is a beneficial use. See EID Response Brief at 9-10 (discussing proceedings at the Idaho Constitutional Convention). EID's argument is readily dismissed in light of the Idaho Supreme Court's decision in *Union Grain & Elevator Co. v McCammon Ditch Co.*, 41 Idaho 216, 240 P. 443 (1925) which confirmed that the use of water for motive power is a beneficial use.⁴ See U.S. Response Brief at 3. The United States Supreme Court has also applied Idaho law to recognize that the use of water to propel machinery constitutes an appropriation that must be "respected and

of Count of Arapahoe v. Crystal Creek Homeowners Assoc., 14 P.3d 325 (Colo. 2000).

⁴ It is widely accepted throughout the west that the use of water for motive power to operate machinery is a beneficial use. See, e.g., *Tartar v. The Spring Creek Water and Mining Co.*, 1855 WL 782 (Cal. 1855)(water as motive power for a saw mill); *State of New Mexico v. Red River Valley Co.*, 182 P.2d 421 (N.M. 1945)(discussing water power to run a mill as a beneficial use); *State of Nebraska v. Nielsen*, 79 N.W.2d 721 (Neb. 1956)(discussing water power for a grist mill as a beneficial use); *Baugh v. Criddle*, 431 P.2d 790 (Utah 1967)(discussing water power to run a mill wheel); *McClellan v. Jantzen*, 547 P.2d 494 (Ariz. App. 1976)(discussing water power as a beneficial use).

enforced.” *Schodde v. Twin Falls Land & Water Co.*, 224 U.S. 107, 121 (1912) (quoting *Basey v. Gallagher*, 87 U.S. 670 (1874)).

The fact that operating the pumps to deliver water is itself a beneficial use also obviates EID’s attempt to analogize the United States’ use of water to a transmission loss. *Cf.* EID Response Brief at 15-16. A use which is beneficial is neither a “loss” nor analogous to a loss. Even were that not the case, no water is lost through operation of the hydro-pumps, as the water is used non-consumptively to drive the pumps and then returned to the river.

In short, the United States has put the water to a use recognized as beneficial by the Idaho Supreme Court. This Court’s inquiry need go no farther to award the United States the water rights at issue in this subcase.

B. EID Relies on Authority That is Inapposite.

EID suggests that the United States’s argument that Reclamation is the beneficial user of the hydro-pump water rights ignores certain “critical cases.” EID Response Brief at 7. That is not the case. The United States’ opening brief did not discuss the authority addressing use of water for irrigation purposes which EID rests its arguments on because that authority has no application here. *See* U.S. Response Brief at 10-11. As one example, EID relies on *Nevada v. United States*, 463 U.S. 110 (1983) which applied Nevada law to hold that while the United States has title to the irrigation water rights associated with the Newlands Project, “the beneficial interest in the rights confirmed to the Government resided in the owners of the land within the Project to which the[] water rights became appurtenant upon the application of Project water to the land.” *Nevada*, 463 U.S. at 126. Nevada law required that result because it “requires for the perfection of a water right *for irrigation purposes* that the water must be beneficially used by

actual application on the land.” *Id.* (emphasis added, citations omitted). That rationale simply has no relevance to this case where, as previously been explained, the United States has beneficially used water for power purposes.⁵⁷

Further, while EID chides the United States for not discussing Section 8 of the Reclamation Act, this case involves a Warren Act contract. The Warren Act expressly references Section 6 of the Reclamation Act. *See* 43 U.S.C. § 524. Section 6 is entirely consistent with the United States’ ownership of the water rights at issue in this sub-case.

The water rights at issue in this case are necessary to the hydro-pumps, which in turn are necessary to the United States fulfilling its obligations under the Warren Act contracts. Section 6 of the Reclamation Act provides that “title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress.” 43 U.S.C. § 498. Although water rights are not generally thought of as “works,” Section 6 reflects Congressional intent that title, management and operation of things necessary to operate a reclamation facility stay in the United States until disposed of by Congress.⁵⁸ This Court should give effect to that intent by decreeing

⁵⁷ Moreover, if the logic of *Nevada* were applicable here, the farmers within the EID and not the District itself would have the beneficial interest in the water rights since it is the farmers who put the irrigation water to beneficial use. EID itself puts no water to beneficial use; rather the District is merely a carrier and distributor of the irrigation water.

⁵⁸ A similar intent is found in the 1927 Department of the Interior manual for the Bureau of Reclamation. The manual discusses the development of power on reclamation projects for both irrigation purposes or outside distribution. The manual states recognizes that power may be generated by the United States to irrigate all or part of reclamation project and provides that “Where the use of power is involved, the permanent right to such use becomes part of the Government water right.” 1927 Manual at 257 (attached as Exhibit 39). Like Section 6 of the Reclamation Act, the power provisions of the 1927 Manual are fully consistent with government ownership of the hydro-pump water rights.

the hydro-pump water rights to the United States.

II. EID HAS NOT DEMONSTRATED THE HYDRO-PUMP WATER RIGHTS ARE APPURTENANT TO THE LANDS OF THE EMMETT IRRIGATION DISTRICT.

A. The Hydro-pump Water Rights Are Appurtenant to the Pumps.

EID argues that the water rights used to operate the hydro-pumps are not appurtenant to the pumps because the ownership of a diversion system and the water right conveyed by a diversion system may be in two separate parties. EID Response Brief at 14. It is true that the ownership of a ditch and the water conveyed through a ditch may be owned by two separate parties.⁷ It is equally true that a ditch and a water right may be owned by the same party and that when a party is both a ditch owner and the beneficial user of the water carried by the ditch, that party “possesses every available legal and equitable interest in the water.” *City of Westminster v. City of Broomfield*, 769 P.2d 490, 493 (Colo. 1989)(*en banc*)(citing *City and County of Denver v. Miller*, 368 P.2d 982, 985 (Colo. 1962)). So it is with the United States. The United States owns the hydro-pumps and has applied water to beneficial use in operating those pumps. Accordingly, the United States holds every available legal and equitable interest in the water at issue in this subcase.

EID further argues that water used for irrigation is appurtenant to the fields to which it is applied rather than the ditch used to deliver the water. *Cf.* EID Response Brief at 14. That may be true, however, unlike the irrigation water used by EID’s members, the water at issue

⁷ It is also irrelevant. The United States has not argued that its ownership of the hydro-pumps by itself requires this court to decree the water rights to the United States. *Cf. Id.* (distorting the United States’ argument). Rather the United States has argued that the water rights at issue in this case are appurtenant to the hydro-pumps, which are owned by the United States. U.S. Memo in Support at 18-19; U.S. Response Brief at 10-11.

in this subcase is *not* applied to the fields within the District. Rather it is applied to the turbines of the hydro-pumps to generate power. Under Idaho law, a water right need not be appurtenant to land; Idaho Code 42-101 allows water to be appurtenant to “the land *or other thing* to which, through necessity, said water is being applied.” I.C. § 42-101 (2002)(emphasis added). Here the water is being applied to the pumps for the beneficial purpose of generating power. Moreover, is being applied “through necessity” to the pumps, as without water the hydro-pumps could not operate. Thus, I.C. § 42-101 demonstrates that the water rights at issue in this case are appurtenant to the hydro-pumps rather than the lands of EID’s members.

Finally, EID’s argument that the hydro-pump water rights must be attached to fields of EID’s members, like its attempt to characterize the United States’ use of water to operate the hydro-pumps as a transmission loss, is no more than an effort to somehow attach the hydro-pump water rights to EID’s irrigation water rights. The notion that a water right can be appurtenant or otherwise connected to another water right was squarely rejected in *Schodde v. Twin Falls Land & Water Co*, a federal case applying Idaho law. In that case the Ninth Circuit first an assertion that “the means adopted for the diversion of the appropriated water [is] part of or attached to [a] right of appropriation” and the Supreme Court adopted the Ninth Circuit’s reasoning in affirming. *Schodde v. Twin Falls Land & Water Co*, 161 F. 43, 45 (9th Cir. 1908), *aff’d* 224 U.S. 107 (1912). Thus the court’s decision makes it clear that EID’s irrigation rights do not include the right to the use of the hydro-pumps for their delivery.⁸

⁸ As was explained in the statement of facts above, EID’s right to the use of federal facilities to deliver its water right was established by the 1921 contract and can only be protected through a contract with the United States. *See Nebraska v. Wyoming*, 325 U.S. 589, 639-40 (1945).

B. EID's Reliance on the 1955 Contract is Misplaced.

The United States' Memorandum in Support demonstrated that the parties 1955 Contract reflects the parties' agreement that the United States holds title to the hydro-pump water rights. U.S. Memo in Support at 18. EID argues that the 1955 Contract cannot recognize the United States' ownership of the hydropower rights because the contract does not include an express reservation of that right.⁹ EID Response Brief at 12. This Court must reject EID's argument for three reasons.

First, there was no need to reserve the water rights because nothing in the contract purported to transfer the hydro-pump water rights—or any other property—to EID. As the explanatory recitals of the 1955 Contract explain, the contract was merely intended to make a portion of the storage space in Deadwood Reservoir available to EID, to provide for EID's payment of some of the expenses of the rehabilitation of Black Canyon Dam and to continue the arrangement first established by the 1921 Contract where the United States would operate Black Canyon Dam to provide irrigation water to the District. 1955 Contract at ¶¶ 4, 5 & 6 (attached to U.S. Memo in Support as Ex. 5).

Second, even if there were a need for a reservation, the failure to have included one would not deprive the United States of the water rights it had obtained through appropriation by beneficial use. "Property of the United States Government is held in trust for the benefit of its

⁹ EID relies in particular on the statement in Article 13 that "such water rights [the water rights connected with the dam's hydroelectric facilities] shall at no time be exercised to the detriment of the water rights held for the benefit of the District as provided in this contract." 1955 Contract at Article 13. As the United States previously pointed out, the intent of this clause is to protect EID's storage water rights at Deadwood Reservoir. See U.S. Response Brief at 8, n 9.

citizens and the Government cannot be deprived of such property by the inactivity, neglect, oversight, carelessness or even intentional conduct of its agents or employees.” *United States v. City of Columbus*, 180 F.Supp 775 (S.D. Ohio 1959). Only the U.S. Congress has the power to dispose of U.S. property. See U.S Response Brief at 4. As a result, “the United States cannot abandon its own property except by explicit acts.” *United States v. Steinmetz*, 973 F.2d 212 (3rd Cir. 1992). Thus, even had a reservation been necessary to preserve the United States’ ownership of the water right it appropriated through beneficial use of water to drive the hydro-pumps, the contract could not have transferred that water right, or any interest in the water right, to EID.

Third, the termination provisions of the 1921 Contract make it clear the parties did not intend to create any property interest in EID through the use of the hydro-pumps to deliver irrigation water to EID. The 1921 Contract provided that in the event the contract was terminated, EID’s right to receive water from Black Canyon Dam would terminate “as fully and completely as if no contract had ever been made and no water had ever been furnished from said works.” 1921 Contract at Article 47. In other words, the contract was not to be read as creating property right in EID; the “right” to the United States’ facilities addressed in the contracts are contract rights which have no further effect upon termination of the contracts.¹⁰ Thus the contract demonstrates that the parties did not intend operation of hydro-pumps to deliver water to the farmers of the Emmett Irrigation District to create any property interest in EID. This Court should not defeat that intent by granting EID a property interest in the hydro-pump water rights.

¹⁰ Indeed, the 1921 Contract provided that if it were terminated, EID’s payments were to be construed as rent paid to the United States for use of its facilities. 1921 Contract at Article 47.

C. “Shared Ownership” Agreements at Other Reclamation Projects are Irrelevant to the present Subcase.

EID finally attempts to support its arguments by asserting that on two other projects having hydro-pump facilities the United States has agreed to share ownership of the hydro-pump water rights. EID Response Brief at 17-19. On those two projects, the United States has elected, in the exercise of its discretion with respect to the operation of reclamation projects, to grant (or "share") some interest in water rights used to operate the hydro-pump facilities. That fact, however, has no relevance whatsoever to the question of who is legally entitled in the first instance to ownership of the water rights.^{11/} In both examples cited by EID—Kennewick and Helena Valley—the U.S. entered into voluntary agreements, for valuable consideration, under which the Government agreed “to share” the water rights. The existence of these arrangements undermines EID's position, rather than supporting it, because they presume that the Government had a legal interest to share in exchange for the benefits secured by the stipulations involved.

In any event, EID misunderstands the pertinent facts. Contrary to EID's representation, the United States and the Kennewick Irrigation District in Washington do *not* “share ownership of certain water rights, including a portion of a right used to power hydraulic pumps at the Chandler pumping plant.” *Cf. Id.* at 18. Rather the United States and KID have agreed that the pumping plant water rights will be decreed to the United States for the use and

^{11/} Moreover, even if the United States' actions at other facilities were relevant, EID's argument would be unavailing because the Supreme Court has recognized that special circumstances justify the Government's taking seemingly inconsistent positions in litigation. *See Immigration and Naturalization Service v. Mendoza*, 464 U.S. 154, 159-62 (1984).

benefit of the irrigation district through a stipulation.^{12/} Such a relationship can hardly be described as “shared ownership.” It is simply an agreed upon contractual entitlement.

Similarly, the arrangement between the United States and the Helena Valley Irrigation District (“HVID”) at the Helena Valley Project in Montana was the product of a specific agreement between the Helena Valley Irrigation District and Reclamation; it does not reflect controlling policy of either the Bureau of Reclamation or the Department of Interior.

Conclusion

Since 1926 Reclamation has diverted water to operate the hydro-pumps and applied it to a beneficial use recognized by the State of Idaho. The water is diverted from the Payette River by Reclamation, into the penstocks of Reclamation’s Black Canyon Dam, and on into Reclamation’s hydro-pumps, where it is used by Reclamation and then returned to the Payette River. Thus the United States has complied with the requirements of Idaho law to establish a water right.

EID nonetheless asks to be decreed a share of that water right. EID’s effort is motivated by its desire to ensure the continued use of the hydro-pumps for the delivery of EID’s irrigation water rights. See EID Response Brief at 5. This court need not grant EID a share of

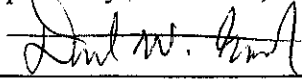
^{12/} This stipulation also includes a means for revoking the agreement if “the Court rejects, modifies, amends, or alters this Stipulation or fails to adopt a Report and Conditional Final Order with these terms.” See *Stipulation Re: Kennewick Irrigation District* at § 5 (attached to Affidavit of James D. (Dar) Crammond (“Crammond Affidavit”) as Ex. 2). In fact, the court has included language in its Conditional Final Order which refers to a “trustee” relationship between the Bureau of Reclamation and Kennewick Irrigation District. See *Conditional Final Order as a Final Judgment Pursuant to CR 54(b) and RAP 2.2(d) and Pretrial Order Number 8 as Amended* at 2 (attached to Crammond Affidavit as Ex. 4). The United States has objected to the use of the term “trustee.” Since there has been no Final Decree issued in this case, and the future of the stipulation is open to question, it would be premature to place significance to the language of the stipulation.

the United States' water rights to protect EID's interests in the operation of the hydro-pumps. That interest is already protected through the perpetual contract between the United States and EID, as is evidenced by the United States' more than eighty (80) year history of delivering irrigation water to EID. Moreover, that contract is the only vehicle that can protect EID's interest; even if this Court were to award EID the full interest in the hydro-pump water rights, absent a contract, EID would have no ability to gain use of the hydro-pumps.

In short, there is neither a legal nor an equitable basis for this Court to do anything other than decree the water rights used to operate the hydro-pumps to the United States.

Dated this 14th day of April, 2003.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "David W. Gehlert", written over a horizontal line.

David W. Gehlert
Attorney for the United States

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accordance with the provisions of the departmental approval. In each case where full payment in cash is not required, a contract of sale shall be executed by the purchaser. A report on the sale of patented lands shall be made by the project superintendent and forwarded with the contract to the commissioner, through the chief engineer's office. If unpatented land, the report shall be addressed to the Commissioner of the General Land Office, with copies to Denver and Washington. The report shall include appropriate proofs of posting and publishing the notice of sale. After payment is fully made deed or patent, as the case may be, will issue to the purchaser. 4a (See CL 2035)

5. Disposal of timber.—When in connection with the construction of a reservoir it appears advisable to remove standing timber from the site, the same may be cut and sold if not needed for construction purposes. As a rule the Forest Service should be requested to submit a report with estimates and suggestions for handling the matter in the best manner. Each case will be handled specially as the surrounding circumstances may dictate.

ELECTRIC-POWER CONTRACTS

(See Contracts; Construction contracts)

1. In general.—Electric power may be developed under any Federal irrigation project, either for project irrigation purposes or for outside disposition, or both. Either surplus power or a power privilege may be leased for not more than 10 years, but the efficiency of the project must not be impaired. A preference shall be given for municipal purposes. (Sec. 5, act of April 16, 1906, 34 Stat. 116, 117; 30 Op. Atty. Gen. 197.) However, leases for as long as 50 years may be made on the Rio Grande project (act of February 24, 1911, 36 Stat. 930) and on the Salt River project. (Act of September 18, 1922, 42 Stat. 847.) Special legislation relating to electric power development on Federal irrigation projects has been enacted as follows: For Yuma project, act of June 5, 1924 (43 Stat. 390, 416); for Boise project, id; for North Platte project, act of March 3, 1925 (43 Stat. 1141, 1167); for Newlands project, act of March 3, 1925 (43 Stat. 1141, 1168). The provisions of the Federal water power act of June 10, 1920 (41 Stat. 1063), do not apply to electric power development in connection with Federal irrigation projects.

2. Power for Federal irrigation purposes.—An entire project, or any division of a project, may be irrigated under the terms of the reclamation law, by pumps operated by electric power developed by the Government. Also, individual holdings lying above the canals on gravity projects may be so irrigated. In the former case, as a general

rule, the pumping plant will be constructed by the Government; in the latter case by the landowner. Where the use of power is involved, the permanent right to such use becomes a part of the Government water right. The time limitations referred to in paragraph 1 above do not apply to the use of power as a part of a Government water right.

3. Lease of surplus power.—After project needs are met contracts may be made for the lease of surplus electrical energy to municipalities, corporations, and individuals, with preference to the first named. The time limitations referred to in paragraph 1 above apply in such cases. Before any contract is made the Washington office shall approve plans of disposal and rates, based on a full report on the matter submitted by the project superintendent through the Denver office. Except in special cases where the same is not applicable, contracts for the lease of electrical energy shall be made on printed Form 7-525.

4. Lease of power privileges.—The development of a Federal irrigation project sometimes provides an opportunity to develop electric power, which is not utilized by the bureau. Such a privilege may be leased under temporary contracts and within the limits stated in paragraph 1. Every such case shall be handled specially as the surrounding circumstances may demand, after submission by the project superintendent, to the Washington office through the Denver office, of a full report on the matter.

EQUIPMENT RENTAL CONTRACTS

(See Contracts)

1. In general.—It is sometimes desirable to rent or lease Government equipment during periods it would otherwise remain idle. This practice frequently provides a great convenience to local interests and at the same time adds to the reclamation fund. In passing on requests for the rental of Government equipment the public interest shall be considered first. Every such contract shall be formal.

2. Conditions of rental.—All rental charges for Government equipment shall be payable in advance. Each contract shall be for a definite period. If the charges for the entire contract period do not exceed \$500, they shall be paid when the equipment is delivered. If such charges exceed \$500, they may be paid in weekly or monthly installments in advance. Equipment shall be returned to the Government by the contractor at the end of the contract period in as good condition as when received, reasonable wear excepted. The contractor shall be responsible for the replacement or repair of the

Certificate of Service

I certify that on this 14th day of April 2003, I caused to be served true and correct copies of the listed documents to the parties identified below.

1. **UNITED STATES' REPLY TO EMMETT IRRIGATION DISTRICT'S
RESPONSE TO UNITED STATES' MOTION FOR SUMMARY JUDGMENT**
2. **AFFIDAVIT OF JAMES D. (DAR) CRAMMOND**

via hand delivery:

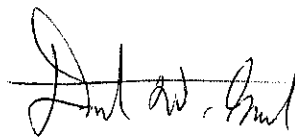
CLERK OF THE SRBA COURT (Original)
SRBA Courthouse
District Court
253 Third Ave. North
Twin Falls, Idaho 83301

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United States' Reply to Emmett Irrigation District's Response to United States' Motion for Summary Judgment