

MINIDOKA PROJECT

CONTRACT

JUNE 1, 1931

AMERICAN FALLS RESV. DISTRICT.

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

American Falls Reservoir
Hindman Project, Idaho.

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Three-party agreement (United States, American Falls
Reservoir District and Idaho Power Company) for lease
of reserved capacity in American Falls Reservoir.
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THIS AGREEMENT, Made this 1st day of 1931
, 1931, in pursuance of the act of Congress
of June 17, 1902 (32 Stat., 388), and acts amendatory
thereof or supplementary thereto, all of said acts
being hereinafter styled the Reclamation Law, between
the UNITED STATES OF AMERICA, hereinafter styled the
United States, represented by the contracting officer
executing this contract, the AMERICAN FALLS RESERVOIR
DISTRICT, hereinafter styled the District, a corpora-
tion organized and existing under the laws of the
State of Idaho and having its principal place of
business at Twin Falls, Idaho, and the IDAHO POWER
COMPANY, hereinafter styled the Power Company, a cor-
poration organized and existing under the laws of the
State of Maine but authorized to do business in the
State of Idaho and having its principal place of
business at Boise, Idaho.

WITNESSETH, That:

2. WHEREAS, the United States, in cooperation with the District and numerous other irrigation districts and irrigation companies of the Snake River Valley, has constructed a reservoir of approximately 1,700,000 acre-foot capacity at American Falls, Idaho, known as the American Falls reservoir, pursuant to contracts between the United States and each of said irrigation districts and irrigation companies, similar in form to the contract of June 15, 1923 between the United States and the District as amended by contracts of November 22, 1924, May 9, 1927, and December 16, 1927; and

3. WHEREAS, a part of the storage capacity of the said American Falls reservoir has been reserved by the United States for use upon certain proposed extensions of the Minidoka project, the canals for which have not yet been completed, and the water available from such reserved portion of said reservoir may be rented temporarily pending the completion of such proposed extensions; and

4. WHEREAS, under date of April 23, 1929, the United States entered into a contract with the River Company, part of which is quoted in paragraph 13 hereof;

NOW, THEREFORE, It is hereby agreed that:

5. The District, acting on behalf of all parties having rights in the said American Falls reservoir and those herein authorized to rent water therefrom, will pay to the United States, on the date of this contract, the sum of Fifty thousand dollars (\$50,000) for the temporary rental, during the irrigation season of 1931, of the stored water available from the government's said reserved portion of American Falls reservoir not yet sold or contracted for irrigation purposes and any surplus available in 1931 from the portion of said reservoir allotted to the Goding division of the Minidoka project, which sum of \$50,000 shall accompany this contract.

6. The term of this contract shall extend from the date hereof until October 31, 1931, but the District may, at its option, extend this contract until October 31, 1932 by paying to the United States the further sum of \$50,000 on or before November 1, 1931, and may at its option further extend the same until October 31, 1933 by paying to the United States the further sum of \$50,000 on or before November 1, 1932, and may at its option further extend the same until October 31, 1934 by paying to the United States the further sum of \$50,000 on or before November 1, 1933, and may at its option further extend this contract until October 31,

1935 by paying to the United States the further sum of \$50,000 on or before November 1, 1934; but this contract shall not extend beyond October 31, 1935 and it is understood that no water out of the Gooding division's share of said reservoir is to be included in this rental after the season of 1931.

7. Each of the parties named in the list attached as Exhibit A may contract with the District for such amount of the stored water available for rental in 1931 as such party may desire, not exceeding the amount set after the name of each on the list hereto attached as Exhibit A, by subscribing to the form of contract hereto attached as Exhibit B; and upon execution of such contract and payment to the District of the sum of twelve (12) cents per acre-foot multiplied by the number of acre-foot named in said contract as the estimated amount of rental water to be secured by such party during 1931, such party shall be entitled to a proportionate part of the water available for rental in 1931 in the portion of the valley (upper or lower valley) in which such party is located, in the proportion hereinafter more fully defined. By "upper valley" is meant that part of Snake River Valley above American Falls and by "lower valley" is meant that part of Snake River Valley below American Falls. The right to participate in the bene-

Site of this contract will expire on 130 days after the date
of this contract)

as to any parties who have not subscribed to said contract (in form attached as Exhibit B) and made said payment to the District prior to that date.

8. Should it be found at the end of the irrigation season of 1931 that the twelve (12) cents per acre-foot paid to the District hereunder by the participating parties is more than the cost per acre-foot to the District of the water delivered hereunder by the United States, then such excess paid to the District by the participating parties over the actual cost to the District will be credited by the District on the next payment coming due to the District from such participating parties.

9. It is agreed and understood that the number of acre-foot set after the name of each party on said lists (Ex. A and C) and also named in said subscription contract of each party (in form attached as Exhibit B) is merely an estimate of the amount which it is thought can be delivered to said party at the outlets of the reservoir and is named in said lists and in said subscription contract for the purpose of determining the pro rata share of the rental supply of stored water to which such party may become entitled, and that the amount actually

furnished may be more or less than such estimated amount.

10. During the season of 1931, the stored water available for rental above American Falls (after deducting the 23,000 acre-feet covered by rental contracts heretofore made, or such part thereof as is not rescinded) will be prorated to the parties above American Falls in the proportion (as nearly as practical) that the amount subscribed by each on form of contract attached as Exhibit B is of the total subscribed above American Falls; and the number of acre-feet set after the name "American Falls Reservoir District above American Falls" on said list marked Exhibit A will be treated as subscribed above American Falls for the purpose of determining such proportion. The stored water available for rental below American Falls will be prorated to the parties below American Falls in the proportion (as nearly as practical) that the amount subscribed by each on form of contract attached hereto as Exhibit B is of the total subscribed below American Falls; and the number of acre-feet set out after the name "American Falls Reservoir District below American Falls" on said list marked Exhibit A will be treated as subscribed below American Falls for the purpose of determining such proportion. The term "amount subscribed" as used in this paragraph means the amount contracted and paid for at the rate of

twelve (12) cents per acre-foot.

11. The rental water to which the District is entitled will be divided among the several canals of the District as the District shall direct in writing, subject to the provisions of this contract.

12. Should the District exercise its option to extend this contract beyond the irrigation season of 1931, the United States will each year after 1931 during the term of this contract as extended deliver at the outlets of the American Falls and Jackson Lake reservoirs to the District and such other parties as may become entitled to participate in the benefits of this contract as extended the stored water actually available from that portion of the government's share of American Falls reservoir which has not been sold or contracted for irrigation purposes, including stored water made available for delivery above American Falls through exchange of stored water from the government's said unsold portion of American Falls reservoir for stored water in Jackson Lake reservoir, but it is understood that there will be no surplus available for rental after 1931 out of the Gooding division's share of said American Falls reservoir.

13. Upon receipt by the United States of each of the \$50,000 payments which it is provided herein

that the District may make on or before November 1, 1931, and on or before November 1 of each year thereafter to and including 1934, the Secretary of the Interior, or such officer of the United States as he shall authorize for such purpose, will each year during the extended term of this contract issue notice to the Idaho Power Company withholding from said company and reserving for irrigation use all the government's undivided share of the carryover stored water available that year in American Falls reservoir, pursuant to that part of article A-3 of the contract of April 23, 1929 between the United States and the Idaho Power Company reading as follows:

"It is agreed that if the Secretary of the Interior, or such officer as he shall specially designate for that purpose, shall find during any winter that conditions on the Snake River watershed are such that it is considered advisable to withhold from the Company a part of the said holdover storage referred to in this paragraph, for the purpose of insuring an adequate irrigation supply for the ensuing season, then such portion as the Secretary, or such officer of the United States, shall deem necessary for that purpose may be withheld from the Company, and in that event the payments for the year in which any part of such holdover storage may be withheld will be reduced at the rate of Sixty Dollars (\$60.00) for every one thousand acre feet so withheld."

14. The Power Company, by signing this contract, consents that the notice above referred to, under article A-3 of said contract, withholding from the Power Company all the government's share of the carryover stored

water in American Falls reservoir, may be given and put into effect each year during the term of this contract regardless of what the water supply conditions or water supply prospects may be, but it is understood that the Power Company assumes no responsibility under this contract and that all the terms of said contract of April 23, 1929 remain in full effect and unchanged except that the Power Company waives such right (if any) as it might otherwise have to object to the giving of said annual notice during the term of this contract withholding from the Power Company the government's share of the carryover water in American Falls reservoir and reserving the same for irrigation purposes regardless of water supply conditions or prospects, and except that it is further understood that when the government's said unsold share of carryover stored water is withheld from Idaho Power Company as provided in paragraph 13 of this agreement, the Power Company will be under no obligation to make the quarterly money payments, or any part thereof, as specified in paragraph B-1 of said contract of April 23, 1929.

15. Each of the parties named in the list hereto attached as Exhibit C may subscribe for a proportionate share of the stored water which may be available from the government's unsold share of American Falls reser-

voir during the irrigation season of 1932 and subsequent years within the term to which this contract may be extended, in the proportionate amount set after the name of each on said Exhibit C, by executing a contract with the District in the form hereto attached as Exhibit B, containing a provision obligating such party (in the event of the extension of this contract to years subsequent to 1931) to pay to the District on or before October 1, 1931, and on or before November 1st of each year thereafter up to and including 1934, a proportionate part of the sum of \$50,000 in the same proportion that such party is to share in the stored water available for rental from the government's unsold portion of American Falls reservoir during the irrigation seasons of 1932, 1933, 1934, and 1935; and if the District exercises its option and extends this contract to years subsequent to 1931, the parties named in Exhibit C who execute such contracts with the District shall be obligated to pay to the District the proportionate part named in said contract of each of said sums of \$50,000 and entitled to a like proportionate part of the stored water available for rental from the government's unsold part of said reservoir during said years, but should any such party fail to make such payment to the District on or before October 1st of any of such years, the District

may, at its option, terminate the contract with such party and such party shall thereafter have no right to any part of the said water supply available from the government's said unsold portion of said reservoir.

16. Each of the parties named on the list attached as Exhibit C may contract with the District for such proportional part of the stored water available from the government's unsold portion of said reservoir during the irrigation seasons of said years from 1932 to 1935, inclusive, as such party may desire, not exceeding the proportionate part set out on said list after the name of such party, and any part thereof not contracted by such parties or forfeited by non-payment of charges will be considered reserved to the District if the District extends the term of this contract as herein authorized. For the purpose of determining the proportionate part of the available storage to which each subscribing party is entitled during any year within the term of this contract, the amounts set after the name "American Falls Reservoir District" on lists hereto attached as Exhibits A and C are considered subscribed and contracted by the District and also such additional amounts, if any, as are forfeited to the District by the failure of other parties to make the agreed payments or retained by the District through failure of any party to subscribe for

the full maximum amount permitted to such party under lists attached as Exhibits A and C.

17. The water provided for herein will be delivered and measured at the outlets of the respective reservoirs in which the same is held, and each of the several parties entitled to a proportionate part thereof will stand its proper pro rata share of all losses after the same is released from the reservoir, and will pay its pro rata share of all cost and expense of river distribution in connection with such water, including a pro rata part of the charges of the watermaster and special deputy state commissioner of reclamation in charge of the distribution of water from said stream, payable in the same manner and subject to the same conditions applicable to the stored water to which such parties have permanent rights, the District to make such payment to the United States and to reimburse itself by collecting a proportionate part thereof from the participating parties unless such river distribution expense is paid direct to the state or county officers.

18. It is agreed that if the District, or any of the parties who are permitted to participate in the benefits of this contract, should find during any of the irrigation seasons within the term of this contract that it has more water than it needs, any surplus available

out of the water provided in this contract in excess of the needs of such party will be sold or leased by such party at cost to such other party or parties as may need the same. Any water leased or sold by any party participating in the water supply provided in this contract for use on projects other than its own during the term of this contract will be considered as water leased or sold out of the water supply provided under this contract up to the full amount of water secured by such party under this contract, and any order or instruction for the transfer of any of the water provided for herein to any project other than that of the original subscriber shall be accompanied by affidavits of both the buyer and the seller or the lessor and lessee of such water, showing the price paid therefor, and if the price charged therefor is in excess of the cost thereof to the party making such transfer or assignment, then an amount equal to double such excess or profit shall be added to the amount of the next payment to be made by such party under any contract between such party and the United States or between such party and the District and the payment thereof may be enforced by withholding delivery of water or by any other means or remedy available for the enforcement of other payments coming due under such contract. The purpose of this section is to prevent speculation in the water pro-

vided under this contract and to insure as far as possible that the water will be available to the parties who need it.

19. It is agreed that any surplus water available in 1931 out of the 400,000 acre-feet of capacity contracted to the Goding division (American Falls Reservoir District No. 2) and rented or used under this contract will be replaced to the credit of said Goding division out of the first water stored in the government's unsold share of said American Falls reservoir after said year 1931, so that during the year 1932, should said reservoir fail to fill to full capacity, said Goding division will have the same carryover right in said reservoir that it would have had therein if said surplus out of its share therein had actually been carried over in said reservoir under the contract provision, reading.

"Should there ever, in any year, be such a shortage in the flow of Snake River available for storage in American Falls Reservoir, that such flow available for storage, together with any surplus held over in said reservoir from previous years, is insufficient to fill the reservoir to full capacity, then in such year any party entitled to water from said reservoir, who shall have conserved and held over in said reservoir from the previous year any part of the water which such party was entitled to have received during such previous year, shall be entitled to the use and benefit of the water so held over by such party to the extent that such held-over water may be necessary to complete the filling of such party's pro rata share of the reservoir capacity."

20. It is agreed and understood that parties participating in the water supply provided herein where

canals are located in the upper valley above American Falls (including that part of the District located above American Falls) will necessarily be subject to the additional limitation that if within any year within the term of this contract the amount of stored water actually available for rental or delivery hereunder in the upper valley (by exchange of storage water from the government's unsold portion of American Falls reservoir for storage water in Jackson Lake reservoir) is insufficient to supply fully the subscriptions hereunder of all such upper valley parties, then the amount of storage water actually available in such year for rental or distribution hereunder in the upper valley will be prorated among the participating upper valley parties in proportion to the amounts specified in their respective contracts hereunder.

21. It is understood that the water supply provided for herein, after the same has been released from the reservoirs of the United States, will be distributed by the proper state officers in charge of the distribution of water from Snake River and that all parties participating in the water supply provided under this contract will look to such state officers for the distribution of such water after the same has been released by the United States.

22. It is fully agreed and understood that this is a temporary water rental contract limited to the season or

consent named herein and under no condition shall any permanent water rights be acquired under this contract or by reason of water delivered hereunder, and all parties participating in the water supply provided for hereunder expressly consent that upon the expiration of the term of this contract all water rights hereunder or on account of water delivered hereunder shall terminate and revert in the United States as fully and completely as if this contract had never been made and no water had ever been delivered hereunder.

23. It is further agreed that with the approval of the Advisory Board of the American Falls reservoir (provided for in the contracts between the United States and the parties participating in the American Falls reservoir), the District may during any winter or spring (prior to April 30) of any year during the term of this contract when the District and the said Advisory Board are convinced that there is going to be a surplus of water over and above the amount needed for irrigation use, sell or rent such surplus to the Power Company upon such terms as may be mutually satisfactory to the District and the Power Company, and in that event each participating irrigation company and district will be entitled to its pro rata share of the amount collected from the Power Company in the same proportion that it contributed to the payment provided for herein.

24. On account of drought, inaccuracy in distribution, or other causes, there may occur at times a shortage in the water supply provided for hereunder, and in no event shall any liability accrue against the United States, its officers, agents or employees for any damage, direct or indirect, arising therefrom, nor shall any obligation provided for herein be reduced because of any such shortage or damage.

25. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract or any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

UNITED STATES OF AMERICA

8/8/31, *St. Aust.* By Geo M. Dixon
Secretary of the Interior

AMERICAN FALLS RESERVOIR DISTRICT

(REAL)
Attest:

By R E Shepherd

President

J H Barker

Secretary

IDAHO POWER COMPANY

(REAL)
Attest:

By M. L. Hibberd

Vice President

James L Boone

Secretary