

United States Department of the Interior

BUREAU OF RECLAMATION

WASHINGTON, D.C. 20240

IN REPLY
REFER TO: 440
510.

FEB 25 1976

Memorandum

To: Secretary of the Interior

From: Commissioner of Reclamation

Subject: Proposed Contracts for the Replacement of American Falls
Dam--Minidoka Project, Idaho-Wyoming

1. Introduction: The Act of December 28, 1973 (87 Stat. 904), authorized the American Falls Reservoir District to undertake the construction and financing of a dam to replace the existing American Falls Dam on the Snake River, Idaho, on behalf of all of the water users who have previously contracted for storage in the American Falls Reservoir. The work to be accomplished by the district consists of the construction of a replacement dam with a two-lane highway on the crest and a bridge immediately downstream, facilities for recreation and fish and wildlife mitigation, water quality facilities, and other related facilities, hereinafter referred to collectively as the American Falls Replacement Dam Program. Upon completion, the United States will take title to the dam as a feature of the Minidoka Project.

Before construction may be initiated, it is necessary, as provided by the Act of December 28, 1973, that the following documents be executed or approved in behalf of the United States:

- a. A contract to be executed between the United States and the American Falls Reservoir District (Government contract).
- b. A contract to be approved by the United States between the American Falls Reservoir District and the Idaho Power Company (Falling Water contract).
- c. Contracts to be executed among the United States, the American Falls Reservoir District, and the 34 individual districts, companies, and individuals which have contracts with the United States



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project file

for storage of water in the existing dam and reservoir (Spaceholder contracts). A contract will also be required for space which the United States holds for the Michaud Division of the Fort Hall Indian Reservation.

d. An agreement, to be approved by the United States, between the American Falls Reservoir District and the Idaho Power Company concerning the construction, operation, and maintenance of the water quality facilities (Water Quality Facilities agreement).

2. Contracting Entities:

a. American Falls Reservoir District: The formation of the American Falls Reservoir District was approved by the shareholders of the Aberdeen-Springfield, Martin, North Side, Twin Falls, and Woodville Canal Companies on January 16, 1923. The district was organized for the purpose of selling bonds to finance the component canal companies' shares of the cost of constructing the original dam. The district is essentially an administrative and not an operating organization. It has 460,170 acre-feet of space in American Falls Reservoir under contract on behalf of the five canal companies. More than 400,000 of the 900,000 irrigated acres receiving water from American Falls Reservoir lie within the boundaries of the American Falls Reservoir District.

For the replacement dam, the American Falls Reservoir District will act on behalf of the spaceholders with respect to contractual arrangements with the United States and with the Idaho Power Company. The district will secure financing for the construction program and will act as the constructing agency.

b. Idaho Power Company: The Idaho Power Company began operations with nine hydroelectric generating plants in August 1916. Currently, the company has assets of more than \$600 million. It operates 14 major generating facilities and some smaller facilities with a maximum system capacity of about 1 million kilowatts. About 19,000 miles of transmission and distribution lines are also owned and operated by the company.

c. Spaceholders: Contracts for a water supply from the existing American Falls Dam and Reservoir were executed by the United States with 14 districts, 18 companies, 2 individuals, and on behalf of the Michaud Division of the Fort Hall Indian Reservation.

3. Project History: American Falls Dam, a feature of the Minidoka Project, is centrally located within the project service area and is adjacent to the city of American Falls, Idaho. The dam was constructed by the Bureau of Reclamation in 1927 and forms a reservoir with 1.7 million acre-feet of capacity. Nearly half of the usable main-stem storage in the upper Snake River Basin of the Minidoka Project results from the impoundment. The upper Snake River Basin reservoirs (Jackson Lake, Palisades, American Falls, and Lake Walcott) are operated as a coordinated system to provide irrigation water to lands throughout the basin and to serve flood control, recreation, fish and wildlife, and power generation.

As of June 30, 1975, \$6,979,335 had been repaid of the total construction charge obligation of \$7,511,087 for the dam and reservoir. In March 1975, departmental approval was received for the form of a proposed repayment contract covering a \$1.5 million rehabilitation and betterment program to modernize facilities of the Burley Irrigation District, which holds some 9 percent of active capacity in the existing dam and reservoir. The repayment contract was executed in January 1976, and funds are available to initiate the program this fiscal year.

Abnormal cracking throughout the concrete portion of the dam was reported as early as 1929 and has become progressively more severe so that the safety of the dam is impaired. As a result of stability analyses conducted in 1972 and studies by a private board of consultants, reservoir filling has been restricted to 11.3 feet below full pool at elevation 4,354.5 feet mean sea level. This restriction limits storage to 1.125 million acre-feet. The use of 575,000 acre-feet, or 34 percent of the reservoir capacity, is precluded.

4. Federal Authorization, Subsequent Actions, and Estimated Cost: In December 1972, the Regional Director, Bureau of Reclamation, Boise, Idaho, completed a preliminary special report which identified a plan to replace the American Falls Dam with a new concrete and earthfill dam immediately downstream from the existing dam. Following a request of the water users, the Idaho Power Company, in consultation with Bechtel Incorporated, evaluated alternatives to the proposed Federal replacement dam. The major objectives were to reduce costs to the water users and to facilitate earlier construction.

The following findings were presented to the water users: (1) A replacement dam utilizing portions of the existing dam could be constructed for about \$20,700,000; (2) The replacement dam could be completed in about 15 months following initiation of construction; and (3) The Idaho Power Company would pay to the spaceholders an amount equal to the annual

requirements for amortization of the spaceholders' bonds over a 40-year period, up to the actual cost of the dam but not to exceed \$19 million plus interest, if the company were permitted to utilize the irrigation water released annually from the replacement dam for power generation. Such use would be at a new powerplant to be constructed, operated, and maintained by the Idaho Power Company at the replacement dam.

As the result of the findings by Bechtel Incorporated and the financing proposal by the Idaho Power Company, the water users supported legislation to authorize non-Federal construction. The Act of December 28, 1973, authorized the American Falls Reservoir District to: finance and construct the American Falls Replacement Dam Program; transfer the completed replacement dam and the related facilities to the United States to operate and maintain; contract with the present water users for the repayment of costs incurred in such construction; and contract with a non-Federal entity to use the water released from the replacement dam for power generation.

Subsequently, it was necessary to obtain approval from State and other Federal entities which have jurisdiction over various aspects of the proposed program. The following actions have now been consummated, contingent upon execution of the enclosed contracts:

- (1) Approval by the State of Idaho and the Environmental Protection Agency of an amended water quality standard for dissolved oxygen content for a portion of the Snake River below American Falls Dam.
- (2) A license from the Federal Power Commission (FPC) permitting the Idaho Power Company to construct and operate a new powerplant at American Falls.
- (3) Agreements with the State concerning fish and wildlife mitigation.
- (4) Enactment, on December 23, 1975, of Public Law 94-164 (89 Stat. 970). Section 7 of that act amends section 103 of the Internal Revenue Code of 1954 to provide tax-exempt status for the interest on bonds that the American Falls Reservoir District will issue to finance the construction program. The uncertain tax status of such obligations had been a major factor in delaying the construction start beyond the scheduled date of late 1974.

Another difficulty has been opposition by some of the water users to the magnitude of the payments to be made by the Idaho Power Company for the use of "falling water." After further negotiations with the Idaho Power Company, the amount of those payments was increased so that the company's

annual payments to the district will be sufficient to retire, with interest, over a 40-year period the sum of (a) \$19,550,000, (b) the costs of the water quality facilities, and (c) approximately one-half of all construction costs in excess of \$38 million.

The total cost of the American Falls Replacement Dam Program, including fish and wildlife mitigation costs, water quality costs, financing costs, and other items not included in the original estimate, is now estimated at \$40,750,000. To assure, to the extent possible, that sufficient bonds would be authorized in the spaceholder elections, that amount was increased to \$44,750,000, of which \$21,784,266 will be repaid by the spaceholders and \$22,965,734 as falling water payments by the Idaho Power Company.

The financing and repayment arrangements were developed by a negotiating committee formed by the water user organizations. Although the Bureau of Reclamation participated in the negotiating sessions, it did not participate in determining the program cost estimates nor has it evaluated the benefits resulting from the use of the water for power generation to determine if the falling water payments are equitable.

5. Contractual Arrangements:

GOVERNMENT CONTRACT

The contract between the United States and the American Falls Reservoir District will authorize the district to finance and provide for the construction of the American Falls Replacement Dam Program; upon completion, to transfer the replacement dam and the related facilities to the United States to operate and maintain; and to provide for the utilization of water released from the replacement dam for power generation by the Idaho Power Company.

The contract is divided into six parts.

Part I defines terminology used in the contract and sets forth the term of the contract which will continue until mutually terminated. However, after April 1, 1977, either party may terminate the contract unless, prior to notice of termination or within 60 days after such notice by the contracting officer, the district has contracted to sell bonds to construct or equip the replacement dam.

Part II pertains to preconstruction and construction activities and:

(1) Requires the district to develop plans, designs and specifications, and a construction work schedule for the American Falls Replacement Dam Program. The district must also develop a plan of operation for the storage and release of water during the construction period. Each of these items must have been approved by the United States prior to the issuance of final designs and specifications for a facility.

(2) Provides for the issuance of permits by the United States for the construction of the replacement dam on lands under its jurisdiction and for access by the United States, the district, and the company on lands of each entity.

(3) Provides for the supervision, inspection, and review of construction by the United States, the submission of construction progress reports, the handling of disputes between the contracting officer and the constructing agency, and other related matters.

(4) Indicates the intention of the United States to enter into an agreement with the State of Idaho for the use and the operation and maintenance of the two-lane highway on the crest of the dam.

Part III provides for operation and maintenance of the existing dam and coordination of water releases during the construction period. It also provides for transfer to the United States of title to the completed replacement dam, the related facilities, and the water quality facilities. The United States will operate and maintain the replacement dam and related facilities; the American Falls Reservoir District will be responsible for operation and maintenance of the water quality facilities. Under a proposed agreement, the Idaho Power Company will operate and maintain those facilities on behalf of the district.

In accordance with the authorizing act, the United States will continue an annual program for the correction and prevention of erosion along the reservoir. The costs of that program, as well as costs associated with operation and maintenance of the replacement dam, the related facilities, and the water quality facilities, will be paid by the spaceholders.

The general operating criteria for the replacement dam contains provisions of the authorizing act retaining the proportionate storage rights of the present water users who sign spaceholder contracts, the water surface elevation at the level created by the existing dam prior to the storage restriction, and the primary irrigation and incidental purposes of the project. It provides that the United States is not obligated to operate the replacement dam for power generation to the detriment of other project purposes or to maintain water elevations in the reservoir specifically for power generation.

Part IV deals with the contracts among the United States, the American Falls Reservoir District, and the spaceholders (Spaceholder contracts) and the contract between the American Falls Reservoir District and the Idaho Power Company (Falling Water contract). In this part, the continued delivery of water to the present water users is made contingent upon the execution of spaceholder contracts and each

spaceholder's continued fulfillment of its contractual obligations. The right of the Idaho Power Company to utilize the water released from the replacement dam for hydroelectric generation at its powerplant to be attached to the dam is, in addition, contingent upon the fulfillment of the company's obligations under the Falling Water contract.

Procedures applicable to the storage space of present water users which do not execute spaceholder contracts (nonparticipating water users) or which fail to make the contractual payments as they become due (defaulted spaceholders), as well as the disposition of such water, are specified in this part of the contract. Within 30 days after execution of the Government contract, the United States is required to notify each nonparticipating water user of the conditions precedent to continued delivery of water. In summary, these are as follows:

a. Nonparticipating Water Users: Any nonparticipating water users will be placed in either of two categories: (1) those which called an election in which the electorate failed to approve the program, and (2) all others. A water user which fails to call an election (category 2) may not receive water during the year that the initial spaceholder payments become due (1977 under the present construction schedule). even though, at that date, water storage and delivery will still be from the existing dam; and unless a spaceholder contract is signed by April 1 of the second year that spaceholder payments are due, the right to the use of such space will terminate. A nonparticipating water user in category 1 may preserve its right to space until April 1 of the third year that spaceholder payments are due by executing a water rental contract the first year that spaceholder payments are due; however, this rental agreement will not permit the water user to use space or to obtain water service during the second year. In other words, permanent arrangements are required after the first year of water rental.

The authority for this arrangement is section 3 of the Act of December 28, 1973, which states ". . . the delivery of water to the spaceholders shall be contingent upon the execution of such contracts and the fulfillment of the obligations thereunder" That language was suggested in the Department of the Interior's legislative comments to cover the situation where a water user may be satisfied with the partial water supply it now receives with restricted operation of American Falls Dam and Reservoir.

b. Defaulted Spaceholders: In the event that a water user executes a spaceholder contract and subsequently fails to make the payments thereunder, the right to use that space or to take water will be immediately suspended. If the space is not redeemed within 1 year, by payment of delinquent charges plus a penalty for delinquent payment, the spaceholder contract will terminate.

c. Disposition of Water: The United States will arrange for the use of the water accruing to the space of a nonparticipating water user or defaulted spaceholder, on a temporary or permanent basis as appropriate to the circumstances: first, for irrigation water use by other spaceholders not in default; second, for irrigation water use by nonspaceholders; and third, for use by the United States. If by May 15 of any year the United States has not arranged for the use of such space and reimbursed the Idaho Power Company for the supplemental falling water payments which the company is required to make on behalf of the nonparticipating water users and defaulted spaceholders, the water accruing to such space will be made available to the company for power generation.

The Act of December 23, 1975, provides tax exemption for interest on obligations for "A dam for the furnishing of water for irrigation purposes which has a subordinate use in connection with the generation of electric energy by water . . ." if "substantially all of the stored water is contractually available for release from such dam for irrigation purposes . . ." In reporting the bill (Report No. 94-531 dated October 3, 1975), the Committee on Ways and Means stated: "The committee intends that subordinate use of water for generating electric energy means that less than 10 percent of the normal supply of stored water may contractually be scheduled for release by the power company and used for generating electric energy . . ." To assure retention of the tax-exempt status of the initial bonds and any future issues, the United States is precluded from marketing more than 8 percent of the active storage capacity to the Idaho Power Company. In accordance with the committee report, this limitation does not apply to water which the company may acquire under 1-year arrangements resulting from its making the supplemental falling water payments.

The Idaho Power Company is guaranteed the right to utilize the water released from the replacement dam for power generation at the new powerplant so long as its FPC license is in effect and it has not defaulted on the Falling Water contract. In addition, the company may schedule for release, subject to specific reservations on use and scheduling, any water it acquires as the result of the United States not marketing water accruing to the space of a nonparticipating water user or a defaulted spaceholder.

The installation of water quality facilities is required because a change in the manner of releasing water from the reservoir may cause a degradation of the dissolved oxygen content of the water downstream which may be detrimental to the fishery resource. The water quality facilities will inject oxygen into the water passing through the powerplant at such times as the dissolved oxygen content approaches the amended State water quality standard of 6 parts per million.

Should the United States determine that the water being released from the replacement dam through the powerplant does not meet the amended State water quality standard for dissolved oxygen content, the United States may bypass part or all of the water around the powerplant to the extent necessary to meet the standard. The operation of the water quality facilities, including the bypassing of water around the powerplant, is to be in accordance with operating criteria developed by the United States, the American Falls Reservoir District, and the Idaho Power Company.

That part of the contract also provides that the United States will submit schedules of anticipated water releases to the Idaho Power Company. Subsequently, the company will submit to the United States a schedule of the amount of such water to be used for power generation. Provision is made for emergency operating conditions and scheduled inspections, maintenance, and repairs to the replacement dam.

Part V provides for the payment of \$293,978.17 of the cost incurred in the construction of the existing dam which had heretofore been allocated for return by the proposed Federal power generating facility which was not (and will not be) constructed. Since the costs cannot be written off without congressional authorization, the annual billing to the spacenoiders for operation and maintenance costs will include an amount to return that unpaid construction obligation within 40 years. In addition, provision is made for quarterly advances of funds by the American Falls Reservoir District to cover costs to the United States in connection with its contractual responsibilities during construction of the replacement dam.

Part VI contains general contract provisions concerning books, records, and reports; rules, regulations, and determinations; nonliability for water shortages and claims relating to the American Falls Replacement Dam Program; contract confirmation; notices; and other standard contract provisions.

FALLING WATER CONTRACT

The contract between the American Falls Reservoir District and the Idaho Power Company covers the company's use of the water released from the replacement dam for power generation. It provides for determining the cost of the American Falls Replacement Dam Program payable by the company as falling water payments in recognition of the use of such water, coordinating construction of the powerplant with construction of the replacement dam, and other matters of mutual concern.

Although the United States is not a party, the proposed contract will be approved by the Regional Director on behalf of the Secretary of the Interior, as required by section 4 of the Act of December 28, 1973. Provisions of the proposed contract are summarized below.

Articles I and II, respectively, contain the explanatory recitals and definition of contract terms and set forth the representations of the American Falls Reservoir District and the Idaho Power Company, reciting the district's compliance with the stipulations of the Act of December 28, 1973.

Article III pertains to the falling water payments to be made by the company in 40 annual installments to retire with interest the costs of the American Falls Replacement Dam Program assigned to the company for its use of the water released from the replacement dam. In addition, upon 10-day written notification from the American Falls Reservoir District or the United States, as the case may be, the Idaho Power Company will pay the amount of the annual payments which would be due from nonparticipating water users had they executed spaceholder contracts or which are due from any delinquent spaceholder. Such payments are referred to as "supplemental falling water payments."

The spaceholder payments are due April 1 and are considered delinquent after that time. Subsequently, the party to which the payment is delinquent (the American Falls Reservoir District or the United States) will notify the other parties of the delinquency. Within 10 days, the company will make the supplemental falling water payments, and the United States will have until May 15 to lease the space for that year to other parties or to arrange to retain the space for its use. If the United States does not consummate such arrangements and reimburse the company for its supplemental falling water payments, the company may, during that year, use the water accruing to such space for power generation. Such water may be used at any time from May 15 through December 31; however, its use during the period from November 1 through December 31 is restricted to a schedule that does not result in releases of water at Minidoka Dam in excess of the hydrologic capacity of Minidoka Powerplant, which is about 4,700 cubic feet per second at that time of year.

Article IV concerns the contract between the United States and the American Falls Reservoir District. It includes the obtaining of permits or interests in lands as necessary for construction of the replacement dam, the approval by the United States of the designs and specifications, the operation and maintenance of the replacement dam by the United States, and the manner of operation as it relates to the release of water and

its use for power generation. It also covers the conveyance to the United States of title to the replacement dam, the related facilities, and the water quality facilities and the suspension or termination by the United States of the company's right to use the released water in the event of default in the falling water or supplemental falling water payments to the American Falls Reservoir District.

Article V refers to the 50-year license issued by FPC on March 31, 1975, for the construction and the operation and maintenance of a powerplant by the Idaho Power Company immediately downstream from the replacement dam. This article also relates the actions required if FPC fails to renew that license.

Article VI covers the designation and duties of three "authorized representatives," one each representing the American Falls Reservoir District, the Idaho Power Company, and the placeholders. The authorized representatives will approve the award of construction and equipment contracts in connection with the American Falls Replacement Dam Program, establish general policies for administering the Falling Water contract and for coordinating construction of the powerplant with the replacement dam, handle matters pertaining to the determination of the cost of the program, and perform other similar duties as specified in the contract.

Article VII requires that construction of the powerplant (by the Idaho Power Company) be coordinated with construction of the replacement dam (by the American Falls Reservoir District) and provides for assignment of construction costs between the two. That arrangement is necessary because some of the work items for one structure can effect cost savings for work on the other. The article further provides for a final reimbursement of costs initially paid by one party which subsequently may be determined to be wholly or partly the responsibility of the other party.

Article VIII concerns the construction aspects of the American Falls Replacement Dam Program including: preparation of designs and specifications; issuance of bids; preparation of a final cost estimate; determination of the obligations of the Idaho Power Company and each placeholder and the amount of bonds to be issued and deposited in a construction fund; and award or rejection of construction bids.

Article IX pertains to the sale of bonds to finance the construction program. Due to existing and anticipated market conditions, it may be advisable to secure interim notes in lieu of issuing long-term bonds. In that event, the Idaho Power Company will act as guarantor to improve the financing conditions of the interim notes.

The board of directors of the American Falls Reservoir District is responsible for determining the amount, maturity, and redemption of the long-term bonds to be sold, the due date of first payments by the spaceholders and the Idaho Power Company, and related matters. Such determinations will be made upon the recommendations of, or in consultation with, the authorized representatives (article VI).

The falling water payments from the Idaho Power Company are to be determined by first computing the combined principal and interest installments due on all of the bonds issued for the project. That portion of the annual installments, as is represented by the following formula, will be assigned the Idaho Power Company under the proposed contract: $\$19,550,000 + A + (B \times C)$.

A = Estimated cost of water quality facilities.

B = Amount in excess of \$38 million for the American Falls Replacement Dam Program.

C = Factor to be determined on the basis of the company's entitlement to storage space adjusted for those costs identified to the company which are in excess of \$38 million and for costs to other water users if the replacement program exceeds \$38 million; computed to be .486405 for a program costing \$40,750,000.

The balance of the combined principal and interest payments will be the responsibility of the spaceholders, including the Idaho Power Company, which is also a spaceholder as the result of an existing contract for 45,000 acre-feet of space. Provision is also made for a redetermination of the obligations if it is necessary to issue additional bonds.

Article X sets forth the responsibility of the Idaho Power Company for the financing and construction of the powerplant. Any joint facilities must first be approved by the authorized representatives. The financing, construction, ownership, and operation of such facilities shall be covered by special agreement subject to approval by the United States.

The Idaho Power Company will pay 33 percent of the annual direct costs incurred by the United States for operation and maintenance of the replacement dam. The remaining operation and maintenance costs incurred by the United States will be allocated to all of the spaceholders, including the Idaho Power Company, to the extent of its share as a spaceholder.

Article XI concerns defaults. Article XII pertains to special covenants; i.e., compliance with laws, rules and regulations, right of access by the American Falls Reservoir District and the United States to the powerplant and to lands within the powerplant project area as defined in the FPC license. Financial reports and nonarbitrage provisions are included too.

Article XIII relates to contract assignments. Article XIV establishes the termination date of the contract as March 31, 2025, 50 years from the date of the FPC license, with renewal contingent upon renewal of that license.

SPACEHOLDER CONTRACT

The proposed contracts among the United States, the American Falls Reservoir District, and the spaceholder entities provide for each spaceholder to repay a proportionate share of the total costs incurred in the American Falls Replacement Dam Program. The form of the proposed contracts reaffirms the existing storage entitlements of each entity which (a) had previously contracted with the United States for a water supply from American Falls Dam and Reservoir, and (b) executes a spaceholder contract. While the existing contracts remain in full force and effect, the provisions of the proposed spaceholder contracts shall prevail wherever they may conflict with the existing contracts.

The construction charge obligation of each spaceholder will be determined as illustrated below:

Estimated total obligation for designing, constructing, and financing the American Falls Replacement Dam Program	\$44,750,000
Less: Falling water payments by the Idaho Power Company	<u>-22,965,734</u>
Total obligation of all spaceholders	\$21,784,266

Each spaceholder's obligation: $\$21,784,266 \times \frac{\text{Spaceholder's Storage Entitlement}}{1.7 \text{ million acre-feet}}$

The spaceholder has the option of paying its obligation either as a lump-sum prepayment or in annual installments, with interest, over a 40-year period. The prepayment option must be exercised within 10 days after contract execution.

In addition, the spaceholders are required to pay annually: (1) the costs incurred by the United States for the operation and maintenance of the replacement dam and the related facilities, including (a) costs of an erosion control program, and (b) the deferred project costs identified to the unconstructed Federal powerplant; and (2) the costs that will be incurred by the American Falls Reservoir District for operation and maintenance of the water quality facilities. Billings will be handled by the United States and the American Falls Reservoir District, respectively.

The proposed contracts provide the procedures to be followed in the event of default on the annual payments. If a default in 1 year is not corrected by April 1 of the next year, the contract can be terminated, leaving the spaceholder without further rights to the use of water from the reservoir. Remedies against the spaceholder are available to the United States and the American Falls Reservoir District in the event that the Idaho Power Company should then default under the Falling Water contract. Also included are the usual general provisions, somewhat modified to accommodate the contractual arrangements with the Idaho Power Company and the requirements of the bond counsel.

The form of the contracts is essentially identical for all spaceholders except.

(1) Modifications are provided for the type of entity or individual entering into the contract. (See inserts A and B following page 71 of the proposed contract form enclosed.)

(2) The contract with the American Falls Reservoir District also recognizes the district's role as the constructing agency.

(3) The enclosed contract with the Idaho Power Company, while reaffirming the existing contract, recognizes that certain provisions of that contract are no longer applicable and states the intent of the United States and the company to meet and review the existing contract for possible revision.

(4) The enclosed contract for water storage by the United States on behalf of its Michaud Division of the Fort Hall Indian Reservation contains several significant differences from the contracts with other spaceholders. It is included here for illustrative purposes only and will be discussed in a separate memorandum requesting your approval for the form of that contract. The Michaud Division has rights to 47,700 acre-feet of the active storage capacity in the existing dam pursuant to the Act of August 31, 1954 (68 Stat. 1026), and the April 25, 1957, Memorandum of Agreement between the Bureau of Reclamation

and the Bureau of Indian Affairs. The Act of December 28, 1975, specifically recognizes those rights and authorizes payments by the United States, consonant with the Leavitt Act (47 Stat. 564), for that share of the cost of constructing and financing the American Falls Replacement Dam Program.

WATER QUALITY FACILITIES AGREEMENT

The agreement between the American Falls Reservoir District and the Idaho Power Company delineates the responsibilities of the American Falls Reservoir District on behalf of the spaceholders and the Idaho Power Company and covers the financing, construction, operation, and maintenance of the water quality facilities to be installed in connection with the American Falls Replacement Dam Program. The agreement will be approved by the United States, and a copy will be attached to each spaceholder contract.

6. Environmental Considerations: A draft legislative environmental impact statement was prepared in May 1973 and reviewed by all public and private organizations and individuals indicating an interest in the American Falls Replacement Dam Program. On November 13, 1974, a final legislative environmental statement (FES 74-60) was filed with the Council on Environmental Quality.

Pursuant to an agreement of July 2, 1974, between the Idaho Fish and Game Department and the American Falls Reservoir District, the State will construct, operate, and maintain facilities to mitigate the anticipated loss of existing recreational and fish and wildlife resources. The costs associated with such facilities are included as a part of the American Falls Replacement Dam Program. As previously discussed, water quality facilities are included in the program to permit the injection of oxygen, when necessary, to enhance the quality of water being released from the replacement dam through the powerplant. Provision is also made for bypassing water around the powerplant.

Recreation and fish and wildlife enhancement facilities are authorized for construction by the Act of December 28, 1973, in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213) and the provisions of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), as amended. A memorandum of agreement covering those arrangements will be forwarded for your approval at the appropriate time.

In addition, the FPC license for the powerplant requires that the Idaho Power Company develop certain recreation areas.

7. Legal Considerations: The Field Solicitor, Boise, Idaho, and the Associate Solicitor - Energy and Resources have concluded that the proposed contracts are in proper legal form.

8. Findings and Recommendations: The proposed contracts will allow the replacement of a deteriorating Federal structure at a minimal cost to the Federal Government. The program and the proposed contracts will assure the continued availability of water supplies to a major agricultural area and help meet regional energy requirements. Accordingly, we believe that the contractual arrangements are in the best interests of the United States, the water users, and the Idaho Power Company.

The forms of the Government contract and the Falling Water contract have been approved by the respective boards of directors for the American Falls Reservoir District and the Idaho Power Company. The Spaceholder contracts have been approved by 20 of the 35 existing contractors after a two-thirds favorable vote at irrigation district elections pursuant to Idaho statute. Including the 47,700 acre-feet of space retained by the United States for the Fort Hall Indian Reservation, that approval represents rights to 1,357,633 acre-feet of space or 79.9 percent of the active reservoir capacity. This percentage could increase following action by the remaining eight entities holding 2.9 percent of the reservoir space.

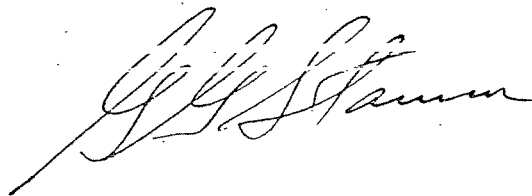
We recommend that you approve the form of the following proposed contracts (dated or revised 11-24-75) in the enclosed document dated December 1975, with addendum dated February 20, 1976. This includes: (1) the contract between the United States and the American Falls Reservoir District (Government contract); (2) the contract between the American Falls Reservoir District and the Idaho Power Company (Falling Water contract); (3) the contract among the United States, the American Falls Reservoir District, and the spaceholders (Spaceholder contract), limited to the form for districts, canal companies, and individuals; and (4) the Water Quality Facilities agreement between the American Falls Reservoir District and the Idaho Power Company. We also recommend your approval of the form of the Spaceholder contract with the Idaho Power Company designated 1/5/76.

Your approval should be with the understanding that minor revisions, consistent with overall contract objectives, may be made prior to execution of the formal contracts. After execution by the other parties, the Regional Director, Boise, Idaho, will execute the Government contract and the Spaceholder contracts in behalf of the United States. He will also approve the Falling Water contract and the Water Quality Facilities agreement and will serve as contracting officer on your behalf for all of the contracts.

9. Urgency of Approval: In the Senate debate on December 17, 1975, of the amendment that was enacted as section 7 of the Act of December 23, 1975, the need to proceed early in 1976 with the American Falls Dam Replacement Program was strongly emphasized. With your approval of the forms of the proposed contracts, the American Falls Reservoir District will proceed with marketing the bonds or interim notes, now scheduled for March 1, 1976. At that time, the district will also issue the construction specifications so that contracts may be awarded by June 1, 1976.

Such timing will permit scheduling of the construction program to minimize the adverse effects of evacuating stored water from the existing dam to permit the beginning of storage behind the replacement dam. That operation is expected to result in a temporary shortage of water for downstream users. Under the approved plan of operation during construction, the critical water period should occur late in the 1977 irrigation season, at which time the existing dam will be breached.

Accordingly, your early approval is requested.



Enclosures

Approved:

(Sgd) Jack O. Horton

ASSISTANT

Secretary of the Interior

MAR 5 1976

Date

bcc: Secretary's Reading File--RECLAMATION (2)
Associate Solicitor - Energy and Resources
Assistant Secretary - LW
Regional Director, Boise, Idaho
Field Solicitor, Boise, Idaho
E&R Center, Code 200, 400
Wyoming Reclamation Representative, Cheyenne, Wyoming
W.O. Code 140, 200, 300, 600, 700
(each w/o enclosures)

LBR:PR Gallagher:ss 2/3/76

February 20, 1976

ADDENDUM

Contracts for the Construction and
Operation and Maintenance of the
AMERICAN FALLS REPLACEMENT DAM PROGRAM

Government Contract

Article 17(c). The period at the end of line 7, page 33, is changed to a semicolon and the following added:

"Provided however, That in the event Bonds in excess of the initial authorization must be issued to complete the American Falls Replacement Dam Program as provided in Article 27 of the Spaceholder Contracts, the Contracting Officer shall not be obligated to withhold the delivery of water to a Spaceholder which has not executed a supplement to its Spaceholder Contract until it is judicially determined that the Spaceholder is obligated to pay its proportionate share of the total cost of the American Falls Replacement Dam Program as contemplated in Article 27 of the Spaceholder Contracts."

Article 17(a). The following new article is added to page 35:

"(g) Although the parties hereto do not believe that any grounds exist for the awarding of damages to a Non-Participating Wateruser, if as a result of the application of this Article 17 a final determination of a court of competent jurisdiction holds that a Non-Participating Wateruser whose use of space is permanently terminated is nevertheless entitled to damages from the United States for the loss of such space, money in the construction fund, as defined in the Falling Water Contract, not necessary to pay other costs of construction of the American Falls Replacement Dam Program shall be used for such purpose, otherwise such amount shall be reimbursed to the United States as part of the Spaceholder Replacement Dam Operation and Maintenance Payments. In all other instances to the extent related to the cost of the American Falls Replacement Dam Program where a final determination of a court of competent jurisdiction holds that a Non-Participating Wateruser is entitled to damages from the United States as a result of the application of this Article 17 such amount shall be reimbursed to the United States as part of the Spaceholder Replacement Dam Operation and Maintenance Payments."

Article 25. The period at the end of line 11, page 45, is changed to a semicolon and the following added:

"but does not include any claims of Non-Participating Waterusers for damages arising from the execution of this Government Contract."

Falling Water and Spaceholder Contracts

Item (13) (page 80 of the Falling Water Contract and page 24 of the Spaceholder Contracts) is revised to read as follows:

"(13) Payments required to be made pursuant to Article 17(g) of the Government Contract.

The previous item (13) of both contracts is renumbered (14).