

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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**SUPPLEMENTAL DIRECTOR'S REPORT REGARDING
SUBCASE NOS. 1-2017, 1-2032, 1-2046, 1-10382, 1-10383, 1-10384, 1-10531 and
1-10532**

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Director

October 20, 2008

I. INTRODUCTION

In accordance with Idaho Code § 42-1412(4) and Administrative Order 1, the Director of the Idaho Department of Water Resources (“Department”) submits this Supplemental Director’s Report regarding subcase nos. 1-2017, 1-2032, 1-2046, 1-10382, 1-10383, 1-10384, 1-10531 and 1-10532. This report is submitted in response to Special Master Dolan’s Trial Scheduling Order, dated May 7, 2008 and subsequent extension granted on October 2, 2008. The Supplemental Director’s Report (“Report”) sets forth the basis of IDWR’s recommendation for the above-listed water rights and was prepared under the supervision of David R. Tuthill, Jr., Director, IDWR.

The following IDWR employees have knowledge of the information contained in this Report: David R. Tuthill, Jr., Director of IDWR and Carter Fritschle, Section Manager, Adjudication Bureau.

II. BACKGROUND

Water rights for power generation near American Falls, Idaho were established back at the turn of the 20th century. On July 15, 1901, Andrew J. Tarbet recorded a posted notice for the generation of power at a hydroelectric station on the west side of the Snake River at American Falls (referred to as the “West Side Power Plant”). Then, on August 1, 1901, J.H Brady recorded a posted notice for the generation of power at a hydroelectric generating station on an island in the Snake River at American Falls (referred to as the “Island Power Plant”). Copies of the posted notices are attached hereto at Exhibit A. These two water rights are now claimed by Idaho Power in the Snake River Basin Adjudication (“SRBA”) under water right nos. 1-10382 and 1-10383.

In 1908, the American Falls Power Company filed an application for permit for water right no. 4168 (later renumbered to no. 1-2017) for power generation at what is commonly

referred to as the “East Side Power Plant.” The license was issued on February 5, 1920. A copy of the license is attached hereto as Exhibit B.

In 1919, seeking a supplemental water right at the East Side Power Plant, Idaho Power filed an application for permit under permit no. 14067 (later renumbered to no. 1-2032). The license was issued on July 21, 1924. A copy of the license, is attached hereto as Exhibit C.

In 1923, Idaho Power entered into a contract with the United States related to its water rights near American Falls, Idaho.¹ A copy of this contract is attached hereto as Exhibit D and is hereafter referred to as the “1923 Contract.” As the 1923 Contract explains, the United States was planning to build a new large dam near American Falls. (Ex. D, at 1). Idaho Power’s senior water rights, down gradient from the proposed new dam, would affect the operation of a new dam by the United States. (Ex. D, at 2). A call by Idaho Power for delivery of water for its downstream water rights could prevent the filling of the new reservoir, which would significantly diminish the benefits of the project to the point it could not be justified. Therefore, Idaho Power and the United States contracted for the sale of certain property and sale of part of Idaho Power’s water rights to the United States so that the project could be built. (Ex. D, at 3-11).

As a result of the contract, Idaho Power issued multiple deeds to the United States, conveying both property and water rights to the United States. By deed dated April 12, 1926, the United States acquired all Idaho Power’s water rights except for that which was reserved under the 1923 Contract. The deed is attached hereto as Exhibit E and hereafter referred to as the “1926 Deed.”

¹ While not documented in the records of the Department, it appears that Idaho Power acquired ownership of the Andrew J. Tabet, J.H. Brady, and the American Falls Power Company water rights prior to 1923.

The United States completed construction of the new federal dam in 1927, just upstream from the three existing power plants. This dam operated until 1978, when the current American Falls dam was completed, replacing the failing 1927 dam.

On December 19, 2006, the Department filed its Director's Report for Basin 01, Part 2, which contained the recommendations for the above referenced water rights. Objections were filed by the United States, the State of Idaho, the Idaho Ground Water Users, Inc ("IGWA") and Idaho Power to various elements of these water rights.

III. DEPARTMENT'S RECOMMENDATIONS FOR IDAHO POWER'S PRE-1923 WATER RIGHTS

The following chart will serve as a reference to explain how the Department recommended Idaho Power's four pre-1923 water rights:

Reference Chart No. 1

Right No.	Basis	Claimed Priority Date	Rec'd Priority Date	Claimed Flow Rate	Rec'd Flow Rate	Rec'd Cumulative Flow Rate
1-10382	Beneficial Use	07-15-1901	07-15-1901	6000 cfs	253 cfs	253 cfs
1-10383	Beneficial Use	08-01-1901	08-01-1901	2000 cfs	611 cfs	864 cfs
1-2017	License	09-03-1908	09-03-1908	1400 cfs	1400 cfs	2264 cfs
1-2032	License	03-08-1919	03-08-1919	4600 cfs	236 cfs	2500 cfs

A. Quantity for Water Right Nos. 1-10382 and 10383

Looking first to water right nos. 1-10382 and 1-10383, the Department's recommended rate of flow is based upon the rate of flow recognized in an administrative transfer of these two water rights in 1929. In the transfer, Idaho Power sought to change the point of diversion and place of use for these two water rights to the East Side Power Plant. A copy of the Certificate of Water Right Transfer for what is now referred to at water right no. 1-10382 is attached hereto as Exhibit F. The Certificate of Water Right Transfer provides in relevant part:

This is to certify that Idaho Power Company...claims a right to the use of 253 c.f.s. of the waters of [the] Snake River for power purposes, initiated and perfected under and by virtue of that certain water location notice by Andrew J. Tarbet, dated July 15th, 1901

...

That upon the application of said Idaho Power Company for a transfer of water right made before the Commissioner of Reclamation of the State of Idaho, and said application having been granted, the right to the use of the said 253 c.f.s. of waters so initiated and perfected by and under said water location notice at the said new place of diversion and said new place of use be, and the same hereby is, acknowledged

Exhibit F, at 1-2.

Similar language was used in the Certificate of Water Right Transfer for the transfer of water right no. 1-10383. The Certificate, attached hereto as Exhibit G, provides:

This is to certify that Idaho Power Company...claims a right to the use of 611 c.f.s., of the waters of [the] Snake River for power purposes, initiated and perfected under and by virtue of that certain water location notice by J.H. Brady, dated August 1, 1901

...

That upon the application of said Idaho Power Company for a transfer of water right made before the Commissioner of Reclamation of the State of Idaho, and said application having been granted, the right to the use of the said 611 c.f.s. of waters so initiated and perfected by and under said water location notice at the said new place of diversion and said new place of use be, and the same hereby is, acknowledged

Exhibit G, at 1-2.

Idaho Power filed an objection to the Department's recommendation of the rate of flow recommended in water right nos. 1-10382 and 1-10383. Idaho Power claimed 6,000 cfs and 2,000 cfs for water right nos. 1-10382 and 1-10383 respectively and has objected, seeking to have the water right recommended as claimed. As stated above, the Department based its recommendation upon the transfer records which establish that the capacity developed for these two posted notice water rights is 253 and 611 cfs. This is the best information the Department

has regarding the actual developed capacity and extent of beneficial use for these two water rights.

B. Quantity for Water Right No. 1-2017

Water right no. 1-2017 is a hydropower water right that was issued to Idaho Power on February 5, 1920. The water right was licensed with a rate of flow of 1,400 cfs. (Ex. B, at 1). In the SRBA, the Department recommended the water right be decreed as licensed. Idaho Power did not object to the rate of flow recommended for this water right.

C. Quantity for Water Right No. 1-2032

In the 1923 contract with the United States, Idaho Power agreed to limit its primary water rights to a maximum quantity of 2,500 cfs. The contract provides, in relevant part:

It is agreed and understood that the company reserves and it shall have as against the United States and those claiming or that may hereafter claim under them, the first or primary right at American Falls to use for power purposes at American Falls the following amounts of water during the following periods of each year:
100 second-feet beginning April 1st, increasing uniformly to 2500 second-feet on May 1st, and continuing at that amount to September 15th inclusive, then decreasing uniformly to 100 second-feet on October 31st and none except as hereinafter provided from November 1st to March 31st inclusive.

Exhibit D, at 12(emphasis added).

While water right no. 1-2032 was licensed to Idaho Power in 1924 for 4,600 cfs, the 1926 Deed granted all of Idaho Power's early water rights to the United States except for that which was reserved under the contract. The 1926 Deed provides, in relevant part:

NOW, THEREFORE, for and in consideration of the sums of money agreed in the said contract of June 15, 1923, to be paid by the Grantee to the Grantor, the receipt of which is hereby acknowledged, the said Grantor has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said Grantee, and to its assigns and successors in interest forever all the Grantor's water rights, appropriations, water filings and permits at American Falls, for use or intended to be used in connection with the Grantor's power plants and proposed power plants [sic] at American Falls, in accordance with and subject to those certain agreements, exceptions

and reservations set for in the said contract between the parties hereto dated June 15, 1923, which said contract, recorded as aforesaid, is hereby made a part of this indenture as fully and completely as if incorporated herein.

Exhibit E, at 1 (emphasis added)(error in original).

Thus, by contract, Idaho Power limited its pre-1923 water rights to no more than 2,500 cfs. The Department's recommendations for these four water rights take into consideration the 2,500 maximum limited reserved in the 1923 Contract and the 1926 Deed. While water right no. 1-2032 was licensed for 4,600 cfs, the Department recommended only 236 cfs because 236 cfs plus the sum of the three other water rights would bring the sum of all of Idaho Power's pre-1923 water rights up to 2,500 cfs. This is reflected in the last column of Reference Chart No. 1 above. The only way for the Department to make water right no. 1-2032 consistent with the 1923 Contract and 1926 Deed was to recommend only up to 236 cfs under water right no. 1-2032, as 236 cfs was all that was necessary to bring Idaho Power up to the 2,500 cfs limit.

D. Combined Use Limit on 1-2017, 1-2032, 1-10382 and 1-10383:

In water right nos. 1-2017, 1-2032, 1-10382 and 1-10383, the Department recommended the inclusion of a combined use limit. The remark provides:

The quantity of water for this right and Right Nos. 01-2017, 01-2032 and 01-10383 when combined together is limited to 100 CFS beginning April 1, increasing uniformly to 2500 CFS on May 1, and continuing at that amount to September 15 inclusive, then decreasing uniformly to 100 CFS on October 31, and none from November 1 to March 31 inclusive.

The Department included this combined use limit because the limit is necessary to reflect how Idaho Power limited the use of its pre-1923 water rights in its 1923 contract with the United States. As the 1923 Contract section quoted above outlines, a tiered approach was agreed upon by Idaho Power as to its water rights. The Department took the season of use language from the

contract and created the remark for water right nos. 1-2017, 1-2032, 1-10382 and 1-10383. The inclusion of this language is important for the definition and administration of these water rights as it best reflects how Idaho Power has agreed to limit its water rights and ensures that the water right would be administered consistent with the 1923 Contract. Furthermore, this season of use is consistent with how these rights have historically been delivered by Water District No. 1.

It is also important to note that both the State of Idaho and IGWA have pointed out in their objections to water right nos. 1-2017, 1-2032 and 1-10383, that the Department forgot to include one of Idaho Power's other pre-1923 water rights in the list of water rights in the remark. The objectors are correct. The Department inadvertently left water right no. 1-10382 off the list of combined rights for water right nos. 1-2017, 1-2032 and 1-10383. Furthermore, the way the comment is currently worded, it is only correct in water right no. 1-10382. To clear up this confusion, the Department proposes to replace the existing comment language in water right nos. 1-2017, 1-2032, 1-10382 and 1-10383 with the following:

The quantity of water for Right Nos. 01-2017, 01-2032, 01-10382 and 01-10383 when combined together is limited to 100 CFS beginning April 1, increasing uniformly to 2500 CFS on May 1, and continuing at that amount to September 15 inclusive, then decreasing uniformly to 100 CFS on October 31, and none from November 1 to March 31 inclusive.

An Amended Director's Reports fixing this oversight will be filed for water right nos. 1-2017, 1-2032, 1-10382 and 1-10383 at a later date.

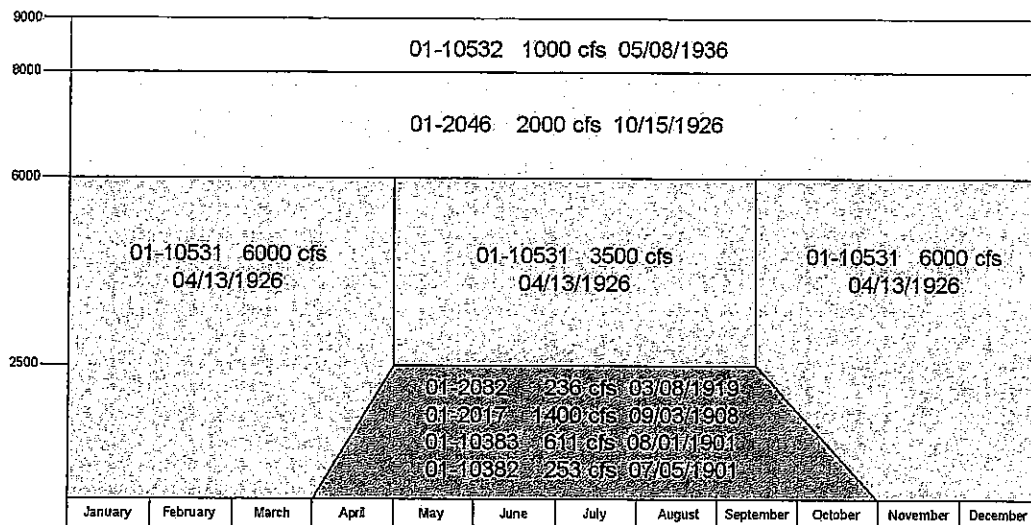
E. Period of Use for 1-10382, 1-10383, 1-2017 and 1-2032.

The Department recommended a period of use of 4/1 to 10/31 for water rights nos. 1-10382, 1-10383, 1-2017 and 1-2032. As with the quantity element, the recommended period of use is based upon the 1923 contract. As show in the contract language quoted above, the contract limits the season of use for Idaho Power's pre-1923 water right to 4/1 to 10/31.

IV. RECOMMENDATION FOR IDAHO POWER'S POST 1923 WATER RIGHTS

The following chart explains how the Department used a tiered approach to reach its recommendations for the three post-1923 water rights:

Reference Chart No. 2
Idaho Power's Water Rights at American Falls Power Plant



A. Water Right No. 1-10531

While the 1923 Contract and the 1926 Deed limited Idaho Power's ownership of pre-1923 water rights, the reality is that Idaho Power did have developed hydropower capacity in excess of 2,500 cfs prior to the 1923 Contract. The Department determined the extent of beneficial use for power generation to be 6,000 cfs at the time of the 1926 Deed based upon the configuration of the East Side Power Plant during the licensing of water right no. 1-2032. The question for the Department was how to best represent this additional beneficial use, while still being consistent with the 1923 Contract and the 1926 Deed. The Department decided that the best way to recognize this additional beneficial use was to recommend the diversion rate in excess of 2,500 cfs as a beneficial use claim with a priority date one day after the 1926 deed.

This way, the full beneficial use of Idaho Power's East Side Power Plant at the time of the 1926 deed is recognized but the rights are also consistent with the 1923 Contract and the 1926 Deed.

The Department created water right claim no. 1-10531 as a beneficial use right to bring Idaho Power up to the 6,000 cfs point. The Department felt that splitting and combining the claims and generating a new claim number was appropriate in this circumstance because Idaho Power had claimed water in excess of what the Department was able to recommend under its other pre-1923 water rights. Generally, in a circumstance like this, the Department seeks amended claims from the claimant prior to splitting the claims and generating new water right numbers. However, in this case, the Department felt that it was unlikely that Idaho Power would amend its claims consistent with how the Department viewed the development of these water rights. The Department split and combined the rights and generated the new claim number because this was the best way to document how the Department viewed the development of these water rights. The other alternative was for the Department to simply recommend that the additional quantity of water be disallowed.

As reflected in Reference Chart 2 above, the Department tiered the season of use for water right no. 1-10531 so that it would have the year round right to generate power using 6,000 cfs consistent with the Department's understanding of the developed beneficial use.

B. Water Right No. 1-2046

In October 15, 1926, Idaho Power filed an application for permit for an additional 2,000 cfs. The license for 2,000 cfs was issued on December 23, 1971. The quantity for water right no 1-2046 was not objected to by Idaho Power and is reflected as claimed in the Reference Chart 2 above.

C. Water Right No. 1-10532

Water Right No. 1-10532 is a beneficial use right created by the Department to bring Idaho Power up to the estimated 9,000 cfs capacity and beneficial use at the Eastside Power Plant. The 1927 Report of Engineer for permit 1-2046 shows that the fourth power generation unit was in operation in 1927. (Ex. H, at 1). The notes also reflect that the fifth power generation unit was still being assembled at that time and that permit 1-2046 did not apply to the additional generation unit. (Id., at 1). However, the Deposition of the permit holder and two witnesses in the file for permit 1-2046 state that on January 5, 1933, they witnessed the operation of both the fourth and fifth units and that the units were using 3,600 cfs. (Ex. I, at 2,4). The Department recommended water right no. 1-10532 as a beneficial use right to capture the increase installed capacity represented by the installation of the fifth power generation unit. The Department recommended a priority date of May 8, 1936 because this is the first day that American Falls reservoir was full and there would have been enough water in the river at American Falls for Idaho Power to be able to use the additional capacity for beneficial use. The Department's records indicate that 1933, 1934 and 1935 were low water years in which American Falls reservoir did not fill and less than 9,000 cfs of water was moving past Neeley Gauge. The Department has reviewed the USGS records for stream flow and determined that until May 8, 1936, there would not have been sufficient water moving through the system to put the additional capacity of the fifth power generation unit to beneficial use.

D. Water Right No. 1-10384

Water Right No. 1-10384 was recommended disallowed by the Department because the other recommended water rights captured the full extent of beneficial use by Idaho Power.

V. OTHER PROVISIONS NECESSARY

The Department's recommendations for water right nos. 1-2017, 1-2032, 1-2046, 1-10382, 1-10383, 1-10531 and 1-10532 included a number of other remarks that are necessary for administration and deliver of these water rights. These remarks are included to clarify and further define Idaho Powers water rights.

A. 1923 Contract Subordination Remark

The Department included two subordination conditions in the Other Provisions Necessary element of its recommendation for water right nos. 1-2017, 1-2032, 1-2046, 1-10382, 1-10383, 1-10531 and 1-10532. The first subordination condition states:

As provided in the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, Idaho Power Company limited its power water rights on the Snake River at whatever point and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water.

The Department fashioned the first subordination condition from language in the 1923 Contract. In the contract, Idaho Power agreed to limit "all other rights of the company on [the] Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water" (Ex. D, at 11).

Given the importance of subordination and how it plays into administration of water rights in a basin, the Department views this subordination clause as necessary for the clarification of these rights and the administration of these rights by the Department as it critically limits the ability of these rights to make a call on other water rights.

B. Subordination Based Upon Accomplished Transfer

The second subordination condition in water right nos. water right nos. 1-2017, 1-2032, 1-2046, 1-10382, 1-10383, 1-10531 and 1-10532 provides:

As a condition of the accomplished transfer, the project shall be operated in such manner as will not conflict with the future depletion in flow of the waters of the Snake River and its tributaries, or prevent or interfere with the future upstream diversion and use of such waters for the irrigation of lands and other beneficial consumptive uses in the Snake River watershed.

This subordination provision came about because of an accomplished change in point of diversion and place of use for Idaho Power's water rights at the East Side Power Plant. Prior to construction of the new American Falls dam, all of Idaho Power's American Falls water rights were located at the East Side Power Plant downstream from American Falls Dam. However, in 1978, the East Side Power Plant was decommissioned and a new power plant was constructed at the base of the new dam on the west side of the river. The change was made without Idaho Power filing an application for change of point of diversion and place of use with the Department.

At the time of the change of the point of diversion and place of use, the constitutional provisions allowing the Department to include subordination on hydropower rights were in effect. Amended in 1927, Idaho Const. Art. 15, § 3 provides that "the state may regulate and limit the use [of water] for power purposes." Thus, the state, if it chooses, may impose subordination upon hydropower rights. It has been the standard policy of the Department since the early 1950s to include a subordination provision as a condition of approval in any transfer proceeding involving hydropower.

Since a subordination condition would have been included on this water right if a transfer had been filed at the time of the change in 1978, the Department believes that it is appropriate to include the subordination provision now. Idaho Code § 42-1425, commonly referred to as the accomplished transfer statute, allows for the recognition of illegal pre-SRBA transfers so long the transfer does not cause injury to other water rights. The intent of the

accomplished transfer statute was to provide parties in the SRBA with a way to validate pre-SRBA transfers so long as the approval would not have a negative effect on other water rights. While not injury in the traditional sense, there would be significant injury to other upstream water rights if these water rights were not subordinated. It is clear from the plain language used in Idaho Constitution Article 15, § 3 that the intent of the changes was to allow the state to ensure that hydropower rights do not impact the development of water in the State. And this was accomplished through the inclusion of subordination provisions in hydropower water rights through the water right permit and transfer processes. It is equally clear that it was not the intent of the Legislature to reward water users for avoiding the transfer process when it passed the accomplish transfer statute. Failing to put subordination conditions on these water rights now would put Idaho Power in a better position through the accomplish transfer statute than they would have been if they had complied with the law back in 1978. This is an inequitable result and is contrary to Idaho Constitution Article 15, § 3 and state water policy.

C. Objections to the Subordination Conditions

Idaho Power objects to the inclusion of any subordination language and “disputes the necessity for and legal correctness of the referenced language” See Objections filed by Idaho Power to water right nos. 1-2017, 1-2032, 1-2046, 1-10382, 1-10383, 1-10531, and 1-10532. The Department disagrees and feels that inclusion of these conditions is critical to the definition and administration of these water rights.

The State of Idaho and IGWA support the inclusion of the two subordination conditions quoted above. However, they both believe that the Department did not go far enough in subordinating these rights. The State of Idaho’s objection states, “In addition to the subordination language found in the ‘other provisions necessary’ portion of the recommended

water right, the water right should also include subordination language based upon historic practice.” See Objections filed by State of Idaho to water right nos. 1-2017, 1-2032, 1-2046, 1-10382, 1-10383, 1-10531, and 1-10532. This position is supported by Idaho Ground Water Appropriators, Inc, (“IGWA”) who state in their objection: “The recommended language under the ‘other provisions necessary’ portion of the water right does not clearly subordinate the water right.” IGWA requests that the historical practices subordination language be included in these rights. See Objections filed by IGWA to water right nos. 1-2017, 1-2032, 1-2046, 1-10382, 1-10383, 1-10531, and 1-10532.

The Department did not include the historical practices subordination language on these water rights simply because it believed that the other subordination conditions would suffice. After further consideration, however, the Department agrees with the State of Idaho and IGWA that these water rights should also have been subordinated based upon historical practices. This subordination of Idaho Power’s water rights is documented in multiple places. For example, in its Falling Water Contract with American Falls Reservoir District, Idaho Power agreed that “[t]he utilization by the Idaho Power Company of the Falling Water at the Powerplant for power generation is and shall continue to be subordinate to the furnishing of water from the Replacement Dam for irrigation purposes.” Falling Water Contract Dated as of March 31, 1976 by and between American Falls Reservoir District and Idaho Power Company, at 10, a copy of which is attached hereto at Exhibit J. As such, the Department supports the inclusion of the historical practices subordination remark used on water rights nos. 1-2017, 1-2032, 1-2046, 1-10382, 1-10383, 1-10531 and 1-10532.

B. Remark No. 3 - Reference to the 1923 Contract

Water right nos. 1-2017, 1-2032, 1-10382 and 1-10383 received the following remark related to its pre-1923 water rights:

The remainder of this right was conveyed to the United States by the Contract Between the United States of America and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923, also identified in the United States records as Symbol ILR-733, and the deeds recorded as instrument numbers 31019, 31020, 31021 and 38454 as on file at the recorders office in Power County, Idaho.

The Department included this remark because it explains what happened to the portions of Idaho Power's pre-1923 water rights that were not recommended to Idaho Power. For example, water right no. 1-2017 was licensed for a year round the season of use. (Ex. B, at 1). However, Idaho Power, through the 1923 Contract and 1926 Deed, retained only the portion of the water right from 4/1 to 10/31. The Department included this comment so that it would be documented that Idaho Power agreed to limit their season of use and the remainder of the water right was sold to the United States. The Department feels that this remark is necessary for future administration of these water rights so that it is clearly documented why certain elements of Idaho Power's water rights were reduced.

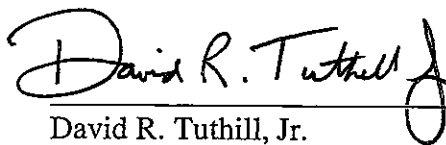
The United States, State of Idaho and IGWA have suggested that other critical contracts should be referenced in these water rights. The Department would support the addition of additional conditions so that all the relevant contracts between the United States and Idaho Power that govern the use of these water rights are identified.

VI. CONCLUSION

The 1923 Contract and 1926 Deed had a significant impact on Idaho Power's pre- and post-1923 water rights. The Department's recommendations appropriately reflect the effect of the contract and the deed on the water rights. The Department's recommendations also appropriately reflect the importance of subordination of hydropower water rights. The

Department recommends that the Special Master adopt IDWR's recommendation for water right nos. 1-2017, 1-2032, 1-2046, 1-10382, 1-10383, 1-10384, 1-10531 and 1-10532 except where the Department has suggested modifications in this report.

Submitted this 20th day of October, 2008.

A handwritten signature in black ink, reading "David R. Tuthill, Jr.", written over a horizontal line.

David R. Tuthill, Jr.

Director

Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described document on the persons listed below by hand delivery, by electronic mail and by United States mail with the correct postage affixed thereto on this 21 day of September 2008.

Document Served: SUPPLEMENTAL DIRECTOR'S REPORT REGARDING
SUBCASE NOS. 1-2017, 1-2032, 1-2046, 1-10382, 1-10383, 1-
10384, 1-10531 and 1-10532.

Original hand delivered to: Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

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BINGHAM GROUND WATER DISTRICT
BONNEVILLE JEFFERSON GROUND
CAREY VALLEY GROUND WATER DIST
JEFFERSON CLARK GROUND WATER
MADISON GROUND WATER DISTRICT
MAGIC VALLEY GROUND WATER DIST
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DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098



Idaho Department of Water Resources

Exhibit A

depose and say that he is of lawful age and the appropriator and claimant of the Water Right described in the within and foregoing notice and whose name is subscribed thereto.

That the statements in said notice are true, and that the original notice, of which the foregoing is a true copy, was posted in a conspicuous place at or near the point of intended diversion at 7:15 o'clock P.M. the first day of August 1901.

Subscribed and sworn to before me this 10th day of August 1901.
J. H. Brady.
A. L. Richardson, Clerk of the District Court, District of Idaho.

By Theo. Turner, Deputy.

Recorded at request of J. H. Brady at 1 o'clock P.M. August 12, 1901.

By Geo. M. Egan,

Deputy.

V. C. Heard,

County Recorder.

Snake River

Andrew J. Tarbet

Notice of Appropriation of Water.

Notice is hereby given that A. Andrew J. Tarbet, of Salt Lake City, State of Utah, do claim of the water of Snake River there flowing, six thousand (6,000) cubic feet per second of time.

That the point at which I intend to divert said water is American Falls, Blaine County, Idaho, in Lot 12, Section 30, Township 7 South, Range 34 East, Boise Meridian.

The purposes for which I claim the water are:

For propelling pumping machinery, for generating electric power and light, for propelling pumping machinery, and for irrigation and domestic purposes.

The place where I intend to use the water is, Blaine County, Idaho.

The general course, length, destination and conduit by which I propose to divert said water is as follows; for mechanical purposes by a tunnel 420 feet, more or less in length, running partly through Sections 30 and 31, T. 7 S. R. 34 E. B. M., and by steel pipe 180 feet, more or less in length, for pumping purposes in the above named Sections Township and Range.

For irrigation, by means of open canals 15 feet wide by 3 feet deep, running northerly and southerly about 15 miles in length to irrigate all the lands in Sections 13, 14, 23, 24, 26, 35 and 36, in Township 7 South, Range 34 East, Boise Meridian; also Sections 1, 2, 9, 10, 11 and 16, in Township 8 South,

Range 30 East, Boise Meridian, also Sections 19, 20 and 31, in Township 7 South, Range 31 East, Boise Meridian.

That it is my intention to fully complete the appropriation of all the amount of water herein claimed in compliance with the Statute of the State of Idaho providing for the appropriation and diversion of water.

Andrew J. Tarbet.

Dated this 15th day of July, 1901.

Recorded at request of W. Rogers at 7³⁰ o'clock P.M. July 17, 1901.

August M. Wood,
Deputy.

W. E. Heard,
County Recorder.

Notice of Water Right.

State of Idaho, ss.
County of Blaine.

That all concerned notice is hereby given:

1st. That John Trombs, John W. Clendenen, Rhoda Clendenen, L. J. Porter, Emily J. Porter, Elva Lushna, Edna Gillespie, Peter Martin, William L. Martin, Charles Samhart, James W. Steen of Blackfoot, Idaho, hereby claim the use of the waters of Big River to the extent of 60 cubic feet per second.

2d. It is intended to divert said water at or near where a copy of this notice is posted and more definitely finally described as follows:

At a point on the West bank of Big Lost River at the center of the S.W. 1/4 S.E. 1/4 of Section 4 T. 5 N. Range 26 E. (on above description give legal subdivision of land or describe the place with reference to some prominent land mark)

3d. The purpose for which said water is intended to be is domestic and agricultural purposes.

The place of its intended use is Sec. 6, 7, 18, 19 T. 3 N. R. 26 E. Sec. T. 3 N. R. 26 E. P. M.

4th. It is intended to divert said water by means ditch or canal.

The general course of the proposed canal is south. The length of the proposed canal is about 12 miles.

It is intended to use said water for irrigating described on the above described land.

a true and correct copy, in a conspicuous place near the point of intended diversion described in said notice to-wit:

At West end of O.S.L. R.R. Bridge about 4 rods to the right of track on fence post at bank of river, ^{in Blaine County, Idaho.} B.P. Randall.

Subscribed and sworn to before me this 19 day of March 1901.

W. A. Johnson

Justice of Peace

Recorded at Request of Geo Ingessoll Jr March 20, 1901 at 3rd o'cl

W. E. Heard County Recorder.

By Geo A. Wood Deputy

Snake River.

Notice of Water Right Location.

J. L. Brady

To Whom it may concern:

Notice is hereby given, that J. L. Brady, of the City of Pocatello, County of Bannock, State of Idaho, has this First day of August, 1901, appropriated and hereby claim the use of waters of Snake River to the extent of two thousand (2000) cubic feet per second, flowing at the point of intended diversion, which said point of intended diversion is particularly described as follows, to-wit:

At the head of the island of the R. Ry. Bridge, at American Falls, Idaho, and on the line of Nevada and Blaine Counties.

That the special purpose or purposes for which said water is claimed, is irrigation, mining, power, and domestic use.

The place of intended use is the City of Pocatello, Town of American Falls, and such other places in the area as may require the use of water for the above named purposes.

That the general purpose of the proposed canal is on each side of the Snake River, for such distance as may be required. That it is intended to complete the work.

The length of said proposed canal or conduit is approximately twenty miles. That it is intended to complete the work for the diversion and use of said water as aforesaid, within five years. A copy of this notice was duly posted at or near the point of intended diversion, on the First day of August, 1901.

Witness my hand at Pocatello, County of Bannock, State of Idaho, this 11th day of August, 1901.

Appropriator and Claimant J. L. Brady
State of Idaho, ss.

depose and say that he is of lawful age and the appropriator and claimant of the Water Right described in the within and foregoing notice and whose name is subscribed thereto.

That the statements in said notice are true, and that the original notice, of which the foregoing is a true copy, was posted in a conspicuous place at or near the point of intended diversion at 7:15 o'clock P.M. the first day of August 1901.

Subscribed and sworn to before me this 15th day of August 1901.
Seal A. L. Richardson, Clerk of the District Court, District of Idaho.

By Theo Turner, Deputy.

Recorded at request of J. H. Brady at 1 o'clock P.M. August 12, 1901.

By Geo W. Lord,
Deputy.

H. E. Heard,
County Recorder.

Snake River

Andrew J. Tarbet

Notice of Appropriation of water.

Notice is hereby given that I, Andrew J. Tarbet, of Salt Lake City, State of Utah, do claim of the water of Snake River there flowing, six thousand (6,000) cubic feet per second of time.

That the point at which I intend to divert said water is American Falls, Blaine County, Idaho, in Lot 12, Section 30, Township 7 South, Range 3 East, Boise Meridian.

The purposes for which I claim the water are:

For propelling pumping machinery, for generating electric power and light, for propelling pumping machinery, and for irrigation and domestic purposes.

The place where I intend to use the water is, Blaine County, Idaho.

The general course, length, destination and conduit by which I propose to divert said water is as follows; for mechanical purposes by a tunnel 120 feet, more or less in length, running partly through Sections 30 and 31, T. 7 S. R. 3 E. B. M., and by steel pipe 185 feet, more or less in length, for pumping purposes in the abovesaid Sections Township and Range.

For irrigation, by means of open canals 15 feet wide by 3 feet deep, running northerly and southerly about 15 miles in length to irrigate all the lands in Sections 13, 14, 23, 24, 26, 35 and 36, in Township 7 South, Range 3 East, Boise Meridian; also Sections 1, 2, 9, 10, 11 and 16 in Township 8 South,

Exhibit B

State of Idaho

Amount 1400 sec. ft.

Priority 9-3-1908----

THIS IS TO CERTIFY that American Falls Power Company

Idaho Power Company

The Point of Diversion is located

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 1400 cubic feet per second.

Description and location of use: At the town of American Falls, Idaho.

GAST. SIG. PLANT

Suppression of Reclamation

WITNESS the seal and signature of the ~~Notary Public~~ Notary Public of Buja, Italia, this 6th

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Exhibit C

State of Idaho License and Certificate of Water Right

Water License No. 14067
Water District No. 86

Amount 4,600 ac. ft.
Priority 3-8-1919

THIS IS TO CERTIFY that Idaho Power Company
of Boise, Idaho, made application for a permit to appropriate the
public waters of the State of Idaho, dated March 8, 1919; that Permit No. 14067
was issued under said application; that Certificate of Completion of works, with a carrying capacity of
4,000 cfs, was issued thereunder on July 21, 1924, showing that said works
were completed on the 1st day of July, 1924; and that on the 1st
day of July, 1924;

Idaho Power Company
of Boise, State of Idaho, made proof to the satisfaction of the
Commissioner of Reclamation of Idaho, of the right to use the waters of Snake River
a tributary of Columbia River, for the purpose of power
under Use Permit No. 14067 of the Commissioner of Reclamation
and that said right to the use of said waters has been perfected in accordance with the laws of
Idaho, and is hereby confirmed by the Commissioner of Reclamation of Idaho and entered of record in
Volume 6 of Licenses, at page 3175, on the 21st day of July, 1924;

The right hereby confirmed dates from March 8, 1919;

The Point of Diversion is located
in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 30, T₄ S., R. 31 E., B. M.
County of Power.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes
aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not
exceed 4,600 cfs, less per demand.

Description and location of use:

Twp	Range	Sec.	Forfeiture Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
			That the water is to be used for power purposes at the <u>Idaho Power</u> <u>Power Station</u> , on the east side of <u>Snake River</u> , in <u>Lot 3</u> of Section <u>31</u> , in Township <u>4</u> South, Range <u>31</u> East, Boise Meridian.		

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of
use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation, affixed at Boise, Idaho,
this 21st day of July, 1924.

W. C. SWENDEEN
Commissioner of Reclamation.

(SEAL)

01-2032

Exhibit D

Symbol Iir-733

CONTRACT

Between the United States and the Idaho Power Company,
Relative to Power Rights at American Falls, Idaho.

Dated June 15, 1923.

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE
MINIDOKA IRRIGATION PROJECT.

Contract between the United States and Idaho Power Company relative to
power rights at American Falls, Idaho.

<u>Subject</u>	<u>INDEX</u>	<u>Article</u>	<u>Page</u>
Purpose and Plans of United States	.	2	1
Company Public Service Corporation	.	3	2
Interference with Rights of Company	.	4	2
Use of Property owned by Company	.	5	2
Company's Prior Filings at American Falls	.	6	2
Need of United States for Power	.	7	3
Mutual Covenants	.	8	3
Property to be Conveyed to United States.	.	9	3
Company's Primary Summer Power Right	.	10	12
Government's Summer Power Right at American Falls.	.	11	13
Company's Additional Summer Power Right	.	12	14
Substitution of Acre-feet for Second-Feet	.	13	15
Company's Summer Regulation at 5,000 Acre-feet	.	14	16
Outlet Works and Division Dam for Company	.	15	16
Company's Primary Storage Capacity	.	16	17
Operation and Maintenance Charges.	.	17	18
Company's Secondary Storage Capacity	.	18	19
Company's Reserved Water Right of 300,000 Acre-feet	.	19	19
Company Right to Primary Storage Water	.	20	21
Company's Rights below Milner Dam	.	21	21
Twin Falls Power Site	.	22	23
Government's Winter Power Rights	.	23	23
Storage Rights of United States and Winter Waste	.	24	23
Release of Liens	.	25	25
Abstract	.	26	25
Payments by the United States	.	27	26
Continued Use of Rights by Company until Storage Capacity is provided	.	28	29
Distribution System in American Falls	.	29	29
Reservation in Deed of Reserved Rights	.	30	30
Failure of Appropriation	.	31	30
Company's Remedy for Failure to Receive Storage	.	32	32
Liens and Encumbrances	.	33	32
Effective when signed by the Secretary	.	34	33
Binding on Successors and Assigns	.	35	33
No Waiver of Rights of Federal Power Commission or State	.	36	33
Cooperation with reference to Water Rights	.	37	34
Agency Clause	.	38	35
Member of Congress Clause	.	39	36
Exhibit "A"			
Exhibit "B"			
Exhibit "C"			

DEPARTMENT OF THE INTERIOR
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Contract between the United States and Idaho Power Company relative to
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<u>Subject</u>	<u>INDEX</u>	<u>Article</u>	<u>Page</u>
Purpose and Plans of United States	.	2	1
Company Public Service Corporation	.	3	2
Interference with Rights of Company	.	4	2
Use of Property owned by Company	.	5	2
Company's Prior Filings at American Falls	.	6	2
Need of United States for Power	.	7	3
Mutual Covenants	.	8	3
Property to be Conveyed to United States.	.	9	3
Company's Primary Summer Power Right	.	10	12
Government's Summer Power Right at American Falls.	.	11	13
Company's Additional Summer Power Right	.	12	14
Substitution of Acre-feet for Second-Feet	.	13	15
Company's Summer Regulation at 5,000 Acre-feet	.	14	16
Outlet Works and Division Dam for Company	.	15	16
Company's Primary Storage Capacity	.	16	17
Operation and Maintenance Charges.	.	17	18
Company's Secondary Storage Capacity	.	18	19
Company's Reserved Water Right of 300,000 Acre-feet	.	19	19
Company Right to Primary Storage Water	.	20	21
Company's Rights below Milner Dam	.	21	21
Twin Falls Power Site	.	22	23
Government's Winter Power Rights	.	23	23
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Release of Liens	.	25	25
Abstract	.	26	25
Payments by the United States	.	27	26
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Agency Clause	.	38	35
Member of Congress Clause	.	39	36
Exhibit "A"			
Exhibit "B"			
Exhibit "C"			

1. THIS AGREEMENT, Made this 15th day of June, 1923 in
2. pursuance of the Act of Congress of June 17, 1902, (32 Stat.,
3. 388) and acts amendatory thereof or supplementary thereto,
4. between THE UNITED STATES OF AMERICA, hereinafter styled the
5. United States, acting for this purpose by Hubert Work
6. Secretary of the Interior, and the IDAHO POWER COMPANY, a
7. corporation organized under the laws of the State of Maine
8. and authorized to do business in the State of Idaho, and
9. having its principal place of business at Boise, Idaho.
10. hereinafter styled the company, its successors and
11. assigns.

2. Purpose and Plans of United States.

12. WHEREAS, the United States contemplates the con-
13. struction of a large reservoir at American Falls, Idaho, to
14. store the flood water and winter flow of Snake River and
15. make the same available for the reclamation of large areas
16. of public lands of the United States including the North
17. Side Pumping Division of the Minidoka Project and other por-
18. tions of the Snake River Valley, and to supplement the water
19. supply of various projects in the Snake River Valley now
20. having an inadequate or insufficient water supply during
21. part of the irrigation season. And

3. Company Public Service Corporation.

22. WHEREAS, the company is a public service corporation
23. furnishing electricity throughout the Southern portion
24. of the State of Idaho for light, heat, and power and
25. irrigation purposes. And

4. Interference with Rights of Company.

26. WHEREAS, said electricity is, to a large extent, generated
27. by the company in hydro-electric plants owned by it
28. and located on the Snake River at American Falls and various
29. points below and the water which it uses and claims for use
30. at American Falls is or would be also used, to a large extent,
31. in its plants located and to be located at points below on
32. the stream, so that the storing by the United States of winter
33. flow at American Falls will interfere with certain power
34. and other rights of company at American Falls and points below
35. and

5. Use of Property Owned by Company.

36. WHEREAS, a portion of said proposed American Falls dam
37. and reservoir will be located on land owned by the company
38. and the construction and operation of the same will also make
39. necessary the destruction of or interfere with certain generating
40. stations and other property of the company; and

6. Company's Prior Filings at American Falls.

41. WHEREAS the company has at American Falls water filings
42. prior to the American Falls filings of the United States
43. sufficient to embrace the entire amount of water reserved

44. to the company under this contract.

7. Need of United States for Power.

45. AND WHEREAS, the said proposed North Side Pumping
46. Division of the Minidoka Project of the United States is a
47. pumping project and the United States will require in con-
48. nection with the said project a large power plant for the
49. development of a large amount of electric power for pump-
50. ing water upon the lands of the said project.

8. Mutual Covenants.

51. NOW, THEREFORE, WITNESSETH: That for and in con-
52. sideration of the covenants and agreements of the par-
53. ties herein, upon the conditions herein named, the par-
54. ties covenant and agree:

9. Property to be Conveyed to United States.

55. The Company hereby agrees, upon the terms and condi-
56. tions hereinafter stipulated, to sell and by good and
57. sufficient deed convey to the United States of America,
58. free of tax liens and of liens or incumbrances created,
59. granted or imposed by itself or its public utility pred-
60. ecessors, all its right, title and interest in and to the
61. following described real estate, situated in the counties
62. of Power and Bingham, State of Idaho, to-wit: (a) The prop-
63. erty described in the list of land descriptions hereto
64. attached as Exhibit "A" and made a part of this contract:
65. and any other real property owned by the company, if any
66. such there be, under the proposed dam or reservoir to be

67. constructed by the United States in connection with the
68. American Falls Reservoir project; the said proposed dam
69. to be located and constructed upstream from the company's
70. American Falls Dam as now constructed and north of the
71. right of way of the Oregon Short Line Railroad Company's
72. bridge property as now located at American Falls; the ti-
73. tle to be conveyed to the United States in all cases to be
74. as full and complete as title as the company has, Provided,
75. however, that to the extent hereinafter expressly provided
76. and to no greater extent than hereinafter expressly
77. provided, and subject to all the terms, conditions and
78. provisions hereinafter set out, the Company shall have and
79. there is reserved to the Company, the right to store the
80. water which it is to receive from the Proposed American Falls
81. Reservoir, upon that part of the property and rights describ-
82. ed in Paragraph 9, located within the reservoir, and agreed
83. to be conveyed by the Company to the United States insofar
84. as such reservation to the Company does not conflict with any
85. of the rights hereinafter granted or agreed to be allowed to
86. the United States or any of the limitations or restrictions
87. hereinafter agreed to be placed upon the rights of the Company.
88. (b) The two power plants at American Falls known as
89. the Island Power plant and the West Side plant, except as to
90. the water rights otherwise provided for in this contract to-
91. gether with the following described tracts of land on which
92. said plants are located, to-wit:

93. The following described parcel of land situated in
94. Lot 5 Sec. 31, T. 7 S., R. 31 E., B. M., beginning at a
95. point on the low-water line, on the West bank of Snake
96. River where the continuation (in a straight line) of
97. the North boundary line of lot five of section thirty-one
98. Township seven south of Range thirty-one east of Boise
99. Meridian, would intersect the said low-water line on the
100. West bank of Snake River; thence west along said north
101. boundary line of said lot five for a distance of 211.5 feet
102. to a stake on the south boundary line of the right of way
103. of the Oregon Short Line Railroad; thence westerly along
104. the south boundary line of said right of way, for a distance
105. of 270 feet to a stake; thence South 43° 14' East for a
106. distance of 386 feet; thence due East to the intersection
107. of the low-water line on the west bank of Snake River;
108. thence along the low-water line on the said west bank of
109. said Snake River, following the meandering thereof, to the
110. point of beginning, containing about two acres, more or less
111. reserving to the Company from said property in said lot five,
112. rights of way and easements for occupancy and use by the
113. Company for the purpose of erecting, operating and maintaining
114. electric transmission lines, and structures and equipment
115. appurtenant thereto for substation, sectionalizing and switch-
116. ing purposes, said rights of way and easements, including
117. the right of ingress and egress over the property of the
118. United States, to be located as mutually agreeable to the

119. United States and the Company.

120. Also the following described piece or parcel of
121. land situated in Lot 12 of Section Thirty (30) Town-
122. ship Seven (7) South, Range Thirty-one (31) East of the
123. Boise Meridian, commencing at a point on the west bank
124. of the Snake River where the easterly boundary line of the
125. right of way of the Oregon Short Line Railroad Company
126. intersects the said bank of Snake River; thence running
127. along the bank of said Snake River in a southerly direction
128. for a distance of eighty feet; thence in a straight line in
129. a westerly direction to the intersection of the east bound-
130. ary line of said railroad company's right of way one hundred
131. and seventy-five feet; and thence along the easterly bound-
132. ary line of said railroad right of way to the place of be-
133. ginning.

134. Also the following described tract of land lying in
135. the river channel of Snake River between Lots 4 and 12, of
136. Section 30, T. 7 S., R. 31 E., B.M. Beginning at a point
137. where the South boundary of Lot 14, Block 20 of the Original
138. Townsite of American Falls intersects the west boundary of
139. Lot 4 Sec. 30, T. 7 S. R. 31 E., B.M., thence in a northerly
140. direction along said west boundary of Lot 4 to the northwest
141. corner of said Lot 4, thence in a straight line across the
142. channel of Snake River to the north east corner of Lot 12,
143. Sec. 30, T. 7 S., R. 31 E., B.M., thence in a southerly

144. direction along the east boundary of said Lot 12 to the
145. southeast corner of said Lot 12; thence in an easterly di-
146. rection along the south boundary of said Sec. 30 to a point
147. where a due north and south line, through a point 25 feet
148. due east from the southeast corner of what is known as the
149. Island Plant power house belonging to the Company, intersects
150. the south boundary of said Sec. 30; thence due north to the
151. center line of the Oregon Short Line Railroad as now located;
152. thence in a straight line in a north-westerly direction to
153. the point of intersection of the east toe of the intake to
154. the said Island Plant with the downstream toe of the company's
155. American Falls dam; thence along the toe of the east face of
156. the east pier or abutment wall of the headworks of said Island
157. plant to the upstream toe of the company's said American Falls
158. dam; thence southeasterly along the upstream toe of that por-
159. tion of the company's said American Falls dam which the com-
160. pany will retain to the easterly toe of the division dam to be
161. constructed by the United States between the westerly end of
162. that portion of the company's dam which the company will retain
163. and the government's proposed American Falls reservoir dam (re-
164. ferred to in Paragraph 15 of this agreement): thence in a straight
165. line in an easterly direction to the point of beginning, and
166. all rights of the Company in the tailrace from said Island and
167. West Side plants; and the United States shall have and there
168. is granted to the United States the right of ingress and egress

169. for pedestrian traffic over the Company's wood-steel
170. bridge leading from the east bank of Snake River to the
171. said Island Plant, so long as said bridge may be maintained
172. by the Company, reserving to the Company, and the Company
173. shall have the right and easement of junction, tie, abutment
174. and support of the portion of the Company's American Falls
175. dam to be retained by it to the portion of said dam to be
176. conveyed to the United States and to the headworks of
177. said Island Plant and to said division dam to be constructed
178. by the United States between the portion of the Company's
179. dam to be retained by it and the Government's proposed
180. American Falls reservoir dam; reserving further to the Com-
181. pany the west portion of the Company's dam as described
182. and with the limitations contained in Paragraph 9 (c), and
183. reserving further to the Company and the Company shall have
184. the right and easement of junction, tie, abutment and sup-
185. port of the Company's said wood-steel bridge upon the pro-
186. perty adjacent to said Island Plant; and reserving further
187. to the Company and the Company shall have the rights and
188. easements of flowage and pondage on and over the premises
189. conveyed to the United States under this agreement and lying
190. south of the down stream toe of the Government's proposed
191. American Falls dam and east of said proposed division dam
192. and the headrace or works of said Island Plant for the pur-
193. pose of utilizing the Company's water rights and rights to
194. the use of water; and further reserving to the Company, and

195. the Company shall have the easement and right to waste
196. and discharge such water over said lands lying south of
197. the downstream toe of the Government's proposed American
198. Falls dam and east of said division dam and the head race
199. or works of said Island plant, and through and over the
200. Company's American Falls dam and works and along and against
201. the works and property of the United States. The Company
202. agrees to so maintain and operate the said power plants
203. and other structures to be conveyed to the United States
204. until delivery of possession thereof to the United States
205. that the same will be delivered to the United States in
206. as good condition as they now are, ordinary wear and
207. tear and any damage directly or indirectly caused by
208. the United States excepted. Provided, however, that
209. should the company on account of any extraordinary
210. accident or calamity be unable to deliver such plants in
211. such condition, it shall have the option to deliver them
212. as they then are and shall furnish to the United States
213. free of charge as demanded by the officer of the United
214. States in charge of said American Falls Reservoir the
215. equivalent output of power of such plants minus the amount
216. of power which may actually be developed at these plants
217. by the United States - such power to be delivered on the
218. generator voltage bus of the Island plant and such deliv-
219. ery to terminate on April 1st, 1928. The power developed
220. at said West Side and Island Plants or delivered by the.

221. company under this subdivision shall after the delivery
222. of the deeds provided for in subdivision (d) hereof be
223. considered a part of and not in addition to the power
224. right otherwise defined to be in the United States under
225. the terms of this agreement.

226. (c) The property described in Exhibit "B" attached
227. hereto and made a part hereof; and the west portion of
228. the present dam and spillway at American Falls up to and
229. including the intake to the Island plant; reserving, how-
230. ever, to the company all and every of the rights it now
231. has to use, maintain and operate said property in connec-
232. tion with the use, maintenance and operation of its East
233. Side plant, until such time as the United States has con-
234. structed the division dam in accordance with the provisions
245. of Paragraph 15 hereof and has made the provision for the
236. discharge of water into the pool between the government's
237. proposed American Falls reservoir dam and the Company's
238. East Side plant in compliance with the terms of said Para-
239. graph 15, Provided that the United States shall, after
240. making second payment, have the right to demolish such por-
241. tion of the present dam and spillway at American Falls west
242. of the Island plant intake as may be necessary for the con-
243. struction of the proposed government power plant and other
244. works at American Falls, providing that by so doing no in-
245. terference is had with the operation of the Company's East
246. Side Plant.

247. (d) All the company's water rights, appropriations
248. water filings and permits, at American Falls, or used or
249. intended to be used in connection with the company's power
250. plants and proposed plants at American Falls, except the
251. rights, whether primary or tertiary, expressly reserved
252. to the company, as hereinafter set out. The water rights
253. of the company transferred to the United States for use
254. for power purposes shall be considered as impressed with
255. a right in the United States to change the use of such
256. water from power to irrigation or to store the same for
257. irrigation whenever the Secretary of Interior shall decide
258. that such water is required for irrigation purposes. But
259. it is expressly agreed and understood that the water rights
260. and rights to the use of water which it is herein agreed
261. that the Company shall have are reserved out of its exist-
262. ing appropriations and rights as independent rights under
263. its own filings and appropriations and of the dates of prior-
264. ity to which the Company is entitled under such appropria-
265. tions and are not to be considered as mere contract rights
266. under contract with the United States.

267. (e) The right to limit all other rights of the company
268. on Snake River at whatever points and in whatever counties
269. the same may be located insofar as and no farther than the
270. rights allowed and granted to the United States to store
271. and use water as herein provided may interfere with any
272. rights of the company at any lower points on Snake River.

10. Company's Primary Summer Power Right.

274. It is agreed and understood that the company reserves
275. and it shall have as against the United States and those
276. claiming or that may hereafter claim under them, the first
277. or primary right at American Falls to use for power purposes
278. at American Falls the following amounts of water during the
279. following periods of each year:
280. 100 second-feet beginning April 1st, increasing uniformly
281. to 2500 second-feet on May 1st, and continuing at that
282. amount to September 15th inclusive, then decreasing uniformly
283. to 100 second-feet on October 31st and none except as here-
284. inafter provided from November 1st to March 31st inclusive.
285. The above described power right so reserved to the com-
286. pany shall be considered as prior and superior to all other
287. rights at American Falls. The company may also have a pri-
288. mary right to use at any time any water brought to American
289. Falls by it from beyond the Snake River water shed, or any
290. stored water acquired by the company from storage capacity
291. hereafter constructed above American Falls provided that it
292. is understood and agreed that the company's right to store
293. water, except water brought by the company from beyond the
294. Snake River watershed, in such capacity above American Falls
295. shall be inferior and subordinate to the right of the United
296. States to provide for building and to fill and use 3,000,000
297. acre-feet of storage capacity, including the capacity of the
298. American Falls Reservoir anywhere on Snake River in addition
299. to the storage capacity now available in Jackson Lake Reser-
300. voir and Lake Walcott.

11. Government's Summer Power Right at American Falls.

301. The United States shall have and the company hereby
302. grants to the United States as against the company a
303. secondary power right at American Falls to that amount
304. of water which will generate continuously for delivery
305. from the generator bus bars in the Government power
306. station at American Falls 6,700 kilowatts beginning
307. on April 1st, increasing uniformly to 25,000 kilowatts
308. on May 1st and to 30,000 kilowatts on June 1st, contin-
309. uing at that amount to August 15th, inclusive, then de-
310. creasing uniformly to 25,000 kilowatts in September 15th,
311. and to 5,500 kilowatts on October 31st, and none from No-
312. vember 1st to March 31st inclusive, except in connection
313. with the 10,000 kilowatts as authorized in Paragraphs
314. 24 and 19 hereof. In no case, however, except as au-
315. thorized by Paragraph 13, shall the water utilized under
316. this power right exceed 1,500 second-feet on April 1st,
317. increasing uniformly to 5,000 second-feet on May 1st,
318. and to 6,000 second-feet on June 1st, continuing at that
319. amount to September 15th inclusive, and decreasing uni-
320. formly to 1,500 second-feet on October 31st. The secondary
321. power right granted to the United States under this paragraph
321a. shall be inferior and subordinate to the primary power right
321b. reserved to the company in paragraph 10 hereof, and shall be
321c. prior and superior to all power rights of the company at Amer-
321d. ican Falls other than the rights reserved under Para. 10 here
321e. and the right to the storage provided in Para. 19. Provided,

322. however, that if the Company, through the refusal, for
323. any reason, of the United States or its successors in
324. control of said reservoir to comply with the terms of
325. this agreement, fails to receive for its own use at its
326. plants at American Falls, unless its right to such water
327. has been taken under the power of eminent domain, the
328. amount of water and at the times and in the manner con-
329. templated by this agreement, it shall have the right to
330. make up such deficiency (during the time of such refusal
331. and no longer) out of the appropriations, water filings,
332. and permits which it now holds, and the amount which the
333. United States shall have the right to store or use out of
334. said appropriations, shall be reduced accordingly. It is
335. agreed and understood that errors or inaccuracies in the
336. release or delivery of water from the reservoir shall not
337. be construed as a refusal by the United States to comply
338. with the terms of this agreement. Nothing contained in
339. this contract shall be construed to make the United States
340. in any way responsible for the delivery of the water to any
341. of the plants of the Company after the same has been re-
342. leased by the United States for the Company from the res-
343. ervoir at American Falls.

12. Company's Additional Summer Power Right.

344. The company reserves and shall have as against the
345. United States a tertiary power right at American Falls to
346. all additional water released or wasted from the reservoir

347. as released or wasted by the United States from April 1st
348. to October 31st inclusive over and above the amounts re-
349. quired to furnish the primary rights reserved to the com-
350. pany in paragraph 10 hereof, and the secondary right grant-
351. ed to the United States under Paragraph 11 hereof.

352. Should the company fail for five years after a storage
353. capacity of 1,500,000 acre-feet or more has been provided at
354. American Falls, to make provision to utilize all the ter-
355. tiary power provided in Paragraph 12, then the United States
356. shall become entitled as against the company to develop and
357. use any unused portion thereof, but should the United States
358. fail, for a period of three years after becoming vested
359. with the right to develop and use such undeveloped portion
360. of said tertiary power, to make provision to utilize the
361. same then thereafter either party may by making such pro-
362. vision become entitled to utilize such undeveloped portion
363. of said tertiary power right.

13. Substitution of Acre-feet for Second-feet.

364. During the period from April 1st to October 31st in-
365. clusive, either party may take instead of the continuous
366. flow specified above in Paragraphs 10 and 11 an equivalent
367. amount of water each day in varying amounts during various
368. hours of the day, providing the number of acre-feet taken
369. by either party during any one day of twenty-four hours
370. shall not exceed a number double the number of second-feet
371. specified in the above schedules in Paragraphs 10 and 11

372. for such day.

14. Company's Summer Regulation of 5,000 Acre-feet.

373. The company may accumulate from time to time in stor-
374. age capacity that would otherwise be unused in the American
375. Falls reservoir out of the amounts of water to which it is
376. entitled under Paragraph 10, an amount not exceeding 5,000
377. acre-feet, and use the same as desired, except that after the
378. reservoir has been filled in any year, the company shall be
379. entitled under this paragraph only to that part of the 5,000
380. acre-feet accumulated after the filling of the reservoir and
381. subject to the limitation of maximum delivery and gate or
382. outlet capacity herein provided, and provided further that
383. the company shall release upon demand by the United States
384. such portion of the said 5,000 acre-feet as the company may
385. have accumulated whenever the available stored water in the
386. American Falls Reservoir to which the present Minidoka pro-
387. ject and extensions thereof diverting from Lake Walcott are
388. entitled amounts to less than 5,000 acre-feet, and in any
389. event release all claim to any part of said 5,000 acre-feet
390. of accumulated water remaining after September 30th.

15. Outlet Works and Division Dam for Company

391. The United States will provide for the company in the
392. proposed dam to be constructed by the United States discharge
393. works sufficient for a 6,000 second-feet delivery with a
394. loss of head net not to exceed two feet. Such discharge works
395. shall discharge into the pool between the proposed reservoir

396. dam and the company's east side plant and shall be as low
397. as, and similar to the outlets connecting with the power
398. plant to be constructed by the United States, and shall be
399. so constructed that the company may and is given the right
400. to attach its penstocks directly thereto and shall be pro-
401. vided with protecting devices similar to those to be pro-
402. vided for the intakes to the proposed Government power
403. plant at American Falls. The United States shall construct
404. and maintain as a part of the American Falls storage dam, a
405. division dam between the westerly and of that portion of the
406. company's American Falls dam which the company will retain,
407. and the Government's proposed American Falls Reservoir dam to
408. an elevation five feet above the present concrete crest of com-
409. pany's dam, and of sufficient strength to retain the water on
410. the easterly side up to the crest of said dam, and provision
411. shall be made whereby the Company shall not be required dur-
412. ing any flood to discharge over that portion of the com-
413. pany's American Falls dam and spillway retained by the
414. company any greater portion of the flood than would have
415. been discharged over that portion retained had said dam
416. and spillway not been changed from its present condition.

16. Company's Primary Storage Capacity.

417. In part consideration for the rights and property to
418. be conveyed to the United States by the company, and as a
419. part of the cost of the proposed development at American
420. Falls the United States grants to the company and the com-

421. pany shall be entitled to the perpetual use of 45,000
422. acre-feet of storage capacity in the reservoir to be con-
423. structed by the United States, such capacity to be for
424. storing the water reserved to the company, and the water
425. referred to in the last sentence of Paragraph 10, the
426. company's right to such storage capacity to be on an equal
427. basis in all respects, except as otherwise provided herein,
428. with other primary storage capacity rights in the reservoir,
429. as defined in the contracts between the United States and
430. the Irrigation Companies and Districts cooperating with the
431. United States in the construction of said reservoir, a form
432. of which contract is attached hereto and marked Exhibit "C".

17. Operation and Maintenance Charges

433. For the purpose of determining the operation and main-
434. tenance charge to be paid by the company, each acre-feet of
435. secondary storage capacity provided for in Paragraph 18 shall
436. be considered as the equivalent of $7/20$ (seven-twentieths)
437. of an acre-foot of primary storage capacity and the company
438. will pay to the United States each year a proportionate part
439. of the total cost of operation and maintenance of the reser-
440. voir, and distribution of the waters therefrom to the head
441. of the ditches and to the power plants of the company di-
442. verting water from Snake River below said reservoir in the
443. proportion that 134,250 acre-feet is of the total available
445. capacity of the reservoir plus 89,250 acre-feet, the times,
446. conditions, and manner of billing or stating such charge to

447. the company and of paying the same to the United States
448. to be the same as provided in the contracts between the
449. United States and the various irrigation companies and dis-
450. tricts cooperating in the construction of said reservoir.

18. Company's Secondary Storage Capacity.

451. Between October 1st of any year and June 10th of the
452. following year, the company shall have and is hereby grant-
453. ed for the purpose of regulating and controlling the water
454. reserved to the company under Paragraph 19 hereof, and the
455. water which may be acquired under the last sentence of Par-
456. agraph 10, a secondary right to use not to exceed 255,000
457. acre-feet of storage capacity in the reservoir when such
458. capacity is not then required and not being used by the
459. owners of irrigation rights to the use of such capacity,
460. but shall have no further right to use any part of said
461. 255,000 acre-feet of capacity or any water stored therein
462. after the reservoir is first filled each season, and the
463. company shall in any event release on April 1st of each
464. year all right and claim to such capacity and water stored
465. therein, except 60,000 acre-feet, and shall release all right
466. and claim to the remainder, if any, on June 10th of each year.

19. Company's Reserved Water Right of 300,000 Acre-Feet.

467. It is agreed that in addition to the primary right re-
468. served in Paragraph 10, the company reserves and shall have
469. the right (for power development at American Falls and to
470. such extent as provided in Paragraph 21 hereof for power
471. development at points below Milner) to 300,000 acre-feet

472. of water flowing into the reservoir after October 1st of
473. any year which shall be the first 300,000 acre-feet flow-
474. ing into the reservoir after October 1st and actually
475. storable therein, except that precedence shall be given
476. for the release through the American Falls Reservoir dam
477. to the amount of water, if any, required to supply the
478. amount of power not exceeding 10,000 kilowatts, half-hour
479. peak, needed to supply the power demands and uses on the
480. Minidoka Project and its proposed extensions, and including
481. the town of Minidoka and the territory now supplied by the
482. United States, and the camps, buildings, construction work,
483. dam and adjacent grounds of the United States at American
484. Falls, but not elsewhere in the old or new town of American
485. Falls except that if the company should refuse to extend
486. its lines into the new or government townsite at American
487. Falls and furnish service in such townsite, then the United
488. States may do so. The extension of power lines into the
489. new townsite and furnishing of power to customers therein
490. shall not be construed as waiving any of the rights of
491. either party as to the amount of damage which may be al-
492. lowed the company in condemnation or otherwise for the
493. removal of the old town or otherwise. Nothing in this
494. paragraph contained shall be construed to deny the United
495. States the right to store and use for irrigation purposes
496. the water herein authorized to be used for the generation
497. of said winter power of not exceeding 10,000 kilowatts,

498. half-hour peak, whenever the Secretary of the Interior
499. shall decide that such water is required
500. for irrigation purposes. The expression "10,000 kilowatts,
501. half-hour peak", wherever it occurs in this contract shall
502. be interpreted as meaning that the average for any half-
503. hour interval must not exceed 10,000 kilowatts.

20. Company Right to Primary Storage Water.

504. The water required to fill the 45,000 acre-feet of
505. primary storage capacity allowed the company under Para-
506. graph 16 hereof shall be a part of the 300,000 acre-feet
507. of water reserved to the company under Paragraph 19 hereof,
508. and the company shall have no right to require the turning
509. out for the company of more than 300,000 acre-feet in any one
510. year beginning October 1st in addition to the primary rights
511. set forth in Paragraph 10 and the holdover authorized in
512. this paragraph. The company shall have the privilege of
513. holding after October 1st and until November 15th any water
514. which it may have remaining in its own storage capacity of
515. 45,000 acre-feet, but the company's right shall expire on
516. November 15th to any amount so held over beyond that date.

21. Company's Rights below Milner Dam

517. The company's right to demand the turning out of water
518. from the reservoir for release by and use below Milner Dam
519. shall be limited to the 45,000 acre-feet of primary storage
520. rights, the water referred to in the last sentence of Para-
521. graph 10, and to such portion of the 255,000 acre-feet men-

522. tioned in Paragraph 18 as is needed for beneficial use for
 523. power development at Shoshone Falls or Twin Falls but not
 524. exceeding the amount that may be necessary to make the
 525. total flow at the head of Shoshone Falls:
 526. 790 second-feet October 1st to November 30th, incl.
 527. 890 " " December 1st to January 31st, "
 528. 790 " " February 1st to February 12th, "
 529. 690 " " February 13th to April 15th, "
 530. 790 " " April 16th to June 10th, "

531. exclusive of any part of the company's said 45,000 acre-feet
 532. of primary storage and the water referred to in the last
 533. sentence of Paragraph 10.

534. Provided, however, that the amount of water released
 535. past Milner for maintaining the flow at Shoshone Falls be-
 536. tween October 1st and June 10th inclusive, as listed above,
 537. shall be a part of the 255,000 acre-feet of primary storage
 538. water which the Company may have stored in its secondary
 539. storage capacity in the reservoir, and provided that it re-
 540. leases such water from the American Falls Reservoir in such
 541. a way that the required flow can be maintained at Shoshone
 542. Falls by the utilization of storage capacity in Lake Walcott not
 543. to exceed 3,000 acre-feet of storage capacity.

544. Nothing in this paragraph is to be construed as abridg-
 545. ing the Company's right to release from the Reservoir and
 546. have passed by Milner at any time any part of its 45,000
 547. acre-feet of primary stored water stored in its primary
 548. storage capacity, or held over as provided for in Paragraph
 549. 20.

22. Twin Falls Power Site.

550. Should the company construct a power plant at Twin
551. Falls, then the flow to be maintained below the Milner dam
552. shall be measured and determined at Twin Falls instead
553. of Shoshone Falls and the schedule of flow set out in the
554. foregoing paragraph shall be reduced 100 second-feet for
555. each period, but nothing herein contained shall be construed
556. as waiving any rights of the United States at Twin Falls
557. or any other power site on Snake River, owned or controlled
558. in whole or in part by the United States, or implying that any
559. license, permit or right will be granted the company.

23. Government's Winter Power Rights.

560. In securing the winter power not exceeding half-hour
561. peak of 10,000 kilowatts provided for the United States
562. under paragraph 19 hereof, the United States shall secure
563. at the Minidoka Power plant so much of said power as it is
564. reasonably practicable to secure from the installed machin-
565. ery at said plant without releasing water which otherwise
566. might be held for irrigation, generating at American Falls
567. the balance, if any, of the amount required. Nothing here-
568. in contained shall be construed to prevent the United States
569. from obtaining the ten thousand kilowatts at its American
570. Falls plants when the Minidoka plant is closed or out of oper-
571. ation on account of enlargement, improvement or repairs.

24. Storage Rights of United States and Winter Waste.

572. The United States shall have and the company hereby
573. grants to the United States as against the company the right

574. to store in the American Falls Reservoir for use for
575. irrigation and domestic purposes and for the power use
576. set forth in Paragraph 11 and for the development of an
577. amount of power not exceeding 10,000 kilowatts, half-hour
578. peak, as defined in Paragraph 19, all of the storable
579. water at American Falls not specifically reserved to the
580. company or granted to the company as against the United
581. States. The company reserves and as against the United
582. States shall have the right to use for power purposes at
583. American Falls water released or wasted between November
584. 1st and March 31st, inclusive, in excess of the amount
585. herein specified to be allowed to the United States for
586. power under the foregoing provisions of this contract.
587. The availability of water for waste shall be determined
588. by the U. S. Reclamation Service by assuming a year be-
589. ginning October 1st of 200,000 acre-feet less storable run-
590. off than the lowest year of record at the time of such
591. determination, and such water as under this assumption
592. is not necessary to provide 300,000 acre-feet for the com-
593. pany and to fill existing storage capacity will be consid-
594. ered available for wasting. Until some lower year is ob-
595. served the lowest year of record shall be deemed to have
596. a storable run-off of 1,500,000 acre-feet, including the
597. 300,000 acre-feet reserved to the company. The United
598. States agrees that such water as may be available for
599. waste during the winter shall be released as nearly uni-
600. formly as may be practicable, or in such other manner as

601. to secure its reasonable availability for beneficial use for
602. power development. During the development period, the com-
603. pany shall have the right to use for power purposes, until
604. demanded by the United States, the water granted to the
605. United States for power purposes, but this water shall be
606. available for use by the United States for power purposes,
607. on its demand.

25. Release of Liens.

608. The company shall secure from the trustee, or other per-
609. son or persons having power to release, and shall deliver to
610. the United States a valid release of all the property and
611. rights described in Para. 9 (a) to 9 (e) inclusive, and Para.
612. 24 from the lien of any mortgage, deed of trust or other in-
613. cumbrance created or granted by the company or its public
614. utility predecessors and a release of all tax liens.

26. Abstract.

615. In consideration of the premises, the company further
616. agrees upon receipt of notice that this contract has been
617. signed by the Secretary of the Interior, to furnish promptly
618. at its own expense, an abstract of title which shall later be
619. extended to include any instruments subsequently recorded in
620. connection herewith, and also the record of conveyance made
621. pursuant to this agreement provided that if the company fails
622. or refuses to furnish proper abstract of title within sixty (60)
623. days after notice that this agreement has been signed, or if
624. within such period written request be made by the company,
625. such abstract may be procured by the United States at the
625a. expense of the company and the cost thereof

626. deducted from the purchase price.

27. Payments by the United States.

627. In consideration whereof the United States agrees that
628. it will purchase said property on the terms herein expressed,
629. and upon the signing of the usual Government vouchers there-
630. for and their further approval by the proper Government of-
631. ficials, it will, as full payment for the property, and
632. rights herein agreed to be conveyed to the United States,
633. and for all damages for entry upon the above described prop-
634. erty, and the construction, operation and maintenance of
635. Reclamation works under said act, and for all claims by the
636. company for surveys, examinations, opinions of experts, and
637. expenses of whatsoever kind incurred in connection with the
638. consummation of this contract, in addition to the storage
639. capacity rights herein granted to the company, cause to be
640. paid the sum of one million (\$1,000,000) Dollars in in-
641. stalments as hereinafter provided by United States Treasury
642. warrant or fiscal officer's check, which sum shall become
643. due and payable in four equal annual instalments, the first
644. of which will be due and payable after the furnishing of the
645. abstract and other evidence of title herein provided and
646. concurrently with delivery of the deeds to the property des-
647. scribed in Paragraph 9 (a), and one instalment on the same day
648. of each year thereafter until the full amount herein spec-
649. ified has been paid. Provided that concurrently with receiv-
650. ing said second instalment the company shall deliver to the
651. United States a deed conveying to the United States all

652. the company's right, title and interest to the West Side
653. and Island plants, other than water rights except as herein
654. otherwise provided and land described in Paragraph 9 (b)
655. and release from tax liens and other liens agreed to be
656. released in Paragraph 25 and concurrently with the receipt
657. of the third instalment, the company shall deliver to the
658. United States the deed and assignment of the properties des-
659. cribed in Paragraph 9 (c), and concurrently with the receipt
660. of the fourth instalment shall deliver the deeds and assign-
661. ments of the remainder of the property and rights herein
662. agreed to be conveyed. Provided that the company may retain
663. the possession and use of all the property herein agreed to
664. to be conveyed or assigned until the first annual instalment
665. has been paid, but that upon the payment of the first annual
666. instalment the United States may take possession of the land
667. needed for the proposed dam and reservoir as described in
668. Paragraph 9 (a), and upon payment of the second annual in-
669. stalment may take possession of the West Side power plant and
670. Island Plant and be entitled to use so much water under the
671. existing appropriations now owned by the Company and used in
672. connection with said plants, as may be necessary for the oper-
673. ation of said plants to their respective capacity, provided,
674. however, that the right of the United States to the use of
675. such water shall terminate absolutely upon the transfer of
676. the water rights to be conveyed by the Company under Para-
677. graph 9 (d) hereof, or upon the vesting of the water rights

678. mentioned in Paragraph 31 hereof upon the failure of the
679. United States to make certain payments, and provided fur-
680. ther, that the water used by the United States at said
681. plants shall not be deducted from the amount of water which
682. the Company is entitled to receive after the rights of the
683. Company become restricted to the amounts specified in Para-
684. graphs 10 and 19 hereof, and neither the consent of the
685. Company to the use of such water nor the use of such water
686. by the United States, shall operate to vest any title or
687. permanent right to the use of such water in the United States,
688. and the United States may take possession of all of the chan-
689. nel west of and including the Island plant and headrace, and
690. property described in 9 (b), but it is understood and agreed
691. that the company may retain the possession and use of all of the
692. other property and rights herein agreed to be conveyed or as-
693. signed to the United States until the completion of the pay-
694. ments herein provided for. The United States may pay any
695. instalments before due and thereupon shall be entitled to
696. take the property and receive the deeds provided to be taken
697. or delivered upon the payment of such instalment. It is
698. expressly understood that the first instalment to be paid
699. by the United States hereunder includes the claim of the com-
700. pany for reimbursement for all expenses of whatsoever kind
701. which it has incurred in connection with the consummation of
702. this contract, including surveys, investigations, examinations,
703. and opinions of experts, and for obtaining data and inform-

704. ation upon which to base this agreement.

28. Continued Use of Rights by Company until
Storage Capacity is Provided.

705. As against the United States the company shall be
706. entitled to continue the use of the water at American Falls
707. covered by the company's present appropriations and filings
708. (except such as the United States may become entitled to
709. use to operate the Island and West Side Plants under this
710. agreement) until such time as the 45,000 acre-feet of pri-
711. mary storage capacity herein granted to the company shall
712. have been first provided for the Company and until that time
713. the company shall be entitled to right of way over the lands
714. and rights conveyed to the United States by the company and
715. located in the bed of the river for the purpose of and to
716. the extent necessary for such continued use by the company
717. of said filings and appropriations in so far as such right of
718. way can be used by present structures and extensions without
719. increasing the hazard of flooding the construction work of
720. the United States. Nothing in this contract shall be con-
721. strued as giving the company a right to demand right of way
722. or flowage easement across any land unwatered for construc-
723. tion purposes by the United States except to the extent nec-
724. essary to pass the natural flow of the river.

29. Distribution System in American Falls.

725. The company shall not by anything herein contained be
726. deemed to have transferred any of its poles, lines, or
727. other property not described in Paragraph 9 located in

728. the present town of American Falls or connecting the dis-
729. tribution system in said town with its generating plants.
730. or to have released the United States from any damages to
731. said poles, lines, distributing system or such other prop-
732. erty on account of the relocation of said town made nec-
733. essary by the construction and operation of the proposed
734. reservoir.

30. Reservation in Deed of Reserved Rights.

735. It is the intent of this agreement that all power
736. rights at American Falls except those granted to the United
737. States herein shall be reserved to the company and that the
738. deeds and conveyances by the company to the United States
739. may contain a reservation in favor of the company of the
740. rights reserved to it under the provisions of this agreement.

31. Failure of Appropriation.

741. Where the payments of this contract extend beyond the
742. current fiscal year it is understood that the contract is
743. made contingent upon Congress making the necessary appro-
744. priations for expenditures thereunder after such current
745. year has expired. In case such appropriation as may be
746. necessary to carry out this contract is not made the com-
747. pany hereby releases the United States from all liability
748. due to the failure of Congress to make such appropriation.

749. Any instalment or portion thereof not paid when due
750. shall thereafter bear interest at the rate of 6% per annum
751. payable annually and should any instalment remain due and

752. unpaid for a period of fifteen years the Company shall
753. have the right to waive and surrender to the United States
754. such due and unpaid installments. The effect of such waiver
755. or surrender shall be to modify paragraph 24 hereof to the
756. following extent:

757. If only the first installment shall have been paid the
758. grant to the United States as therein provided to store
759. in American Falls reservoir all the storable water not
760. reserved to the Company or granted to it as against the
761. United States shall be limited to such storable water over
762. 2700 second-feet; if only the first two installments shall
763. have been paid, such grant shall be limited to the stor-
764. able water not reserved to Company or granted to it as
765. against the United States over 2200 second-feet; and if
766. the first three payments shall have been made, then over
767. and above 1700 second feet, such additional amounts of
768. water as listed above to be retained by Company in lieu
769. of cash which it would otherwise be entitled to. The
770. provisions of this paragraph shall not impair the right,
771. title or interest of the United States in any property
772. theretofore conveyed to it by the Company or otherwise
773. affect this agreement or the rights hereunder. Should
774. such waiver and surrender of unpaid installments be made
775. as herein provided and should the United States fail to
776. construct a reservoir of sufficient capacity to provide
777. the storage capacity herein agreed, granted or agreed to

778. be furnished to the company the United States shall not

779. be liable in damages for failure to provide such storage

780. capacity.

32. Company's Remedy for Failure to Receive Storage.

781. It is the understanding and intent of the parties

782. that the storage capacity rights herein granted to the

783. company shall be vested rights in it but that if by change

784. of Law, a court or commission decision or in any other way

785. than by errors or inaccuracies in delivery or release

786. of water from the reservoir the company shall be refused or

787. denied the right to and use of said capacity or any thereof.

788. the Company shall be entitled to recover the damages which

789. it may suffer, and to such other relief as a court of

790. competent jurisdiction may adjudge the Company entitled to

791. under the terms of this agreement and the situation of the

792. parties, but in case of any errors or inaccuracies in the

793. delivery or release of water the company shall have and

794. be limited to the same rights and redress as provided for

795. the Irrigation Companies and Districts in the contracts,

796. the form of which is attached hereto and marked Exhibit "C",

797. between the United States and the Irrigation Companies and

798. Districts cooperating with the United States in the con-

799. struction of the Reservoir.

33. Liens and Incumbrances.

800. Liens or incumbrances existing against said premises

801. and of which the company agrees to secure the release, may

802. at the option of the United States be removed at the time
803. of conveyance by reserving the amount necessary from the
804. purchase price and discharging the same with the money so
805. reserved, but this provision shall not be construed to au-
806. thorize the incurring of any lien or incumbrance as against
807. this agreement, nor as an assumption of the same by the
808. United States.

34. Effective when Signed By the Secretary.

809. This agreement shall become effective to bind the
810. United States to purchase said premises immediately upon its
811. approval or signature by the Secretary of the Interior,
812. provided, however, that it shall be of no further force
813. or effect unless signed by the Secretary of the Interior,
814. within ninety days after its execution by the Company and
815. authorization, ratification or approval by the board of di-
816. rectors of the company which shall be evidenced by a cer-
817. tified copy of the resolution filed with the Director of
818. the Reclamation Service.

35. Binding on Successors and Assigns.

819. This agreement shall inure to the benefit of and be
820. binding upon the successors and assigns of the company, and
821. also upon the successors and assigns of the United States.

36. No Waiver of Rights of Federal Power Commission or State.

822. The execution of this contract shall not be construed
823. as waiving any authority, jurisdiction or control which the
824. Federal Power Commission may have over the company or its

825. assigns at American Falls or elsewhere, and the approval
W. G. Swendsen
826. of this contract by Comm. Rec. representing the State
827. of Idaho shall not be construed as waiving or abridging
828. any lawful jurisdiction, authority, or control which such
829. officer or the State of Idaho may have over the waters of
830. the state or the issuing of permits, certificates or li-
831. censes thereto.

37. Cooperation with reference to Water Rights.

832. In complying with the laws of Idaho relating to per-
833. fecting water filings made by either party at American Falls
834. both parties shall cooperate so that to the extent permitted
835. by statute and the administrative officers having jurisdiction,
836. the construction of works and use by either party shall ap-
837. ply to proof on the permit of the earliest priority of the
838. class on which such proof can be made. In the event the
839. company desires to transfer and change the points of
840. diversion and use, or any of them, of any of its appropria-
841. tions, rights or permits now held by it in connection with
842. the Island and West Side Power Plants, the Company as against
843. the United States shall have the right at any time after the
844. right of the United States to use the Company's water in con-
845. nection with said Island and West Side Plants' terminates as
846. provided in Paragraph 27 hereof, to transfer and change such
847. points of diversion and use from the Island and West Side
848. Plants to the East Side Plant, or any other plant or plants
849. constructed by the Company at American Falls, subject to the

850. provisions and limitations of this contract in respect to
851. the time of use and amount of water to which the Company may
852. be entitled; and the United States shall cooperate with the
853. company in making such transfer and change; and in the event
854. the United States desires to transfer and change the points
855. of diversion and use of the water rights or any part thereof
856. conveyed to the United States by the Company and to which it
857. may be entitled under the terms of this contract from the
858. present points of diversion and use to any plant or plants
859. owned by the United States at American Falls, the United
860. States shall have as against the Company the right to make
861. such transfer and change in such points of diversion and
862. use subject to the provisions and limitations of this con-
863. tract in respect to the time of use and amount of water to
864. which it may be entitled, and the Company shall cooperate
865. with the United States in securing such transfer and change.

38. Agency Clause.

866. The contractor expressly warrants that he has employed
867. no third person to solicit or obtain this contract in his
868. behalf, or to cause or procure the same to be obtained upon
869. compensation in any way contingent, in whole or in part upon
870. such procurement; and that he has not paid, or promised or
871. agreed to pay, to any third person, in consideration of such
872. procurement, or in compensation for services in connection
873. therewith, any brokerage, commission, or percentage upon the
874. amount receivable by him hereunder; and that he has not, in

875. estimating the contract price demanded by him, included
876. any sum by reason of any such brokerage, commission, or
877. percentage; and that all monies payable to him hereunder
878. are free from obligation to any other person for services
879. rendered, or supposed to have been rendered, in the pro-
880. curement of this contract. He further agrees that any
881. breach of this warrant shall constitute adequate cause
882. for the annulment of this contract by the United States,
883. and that the United States may retain to its own use from
884. any sums due or to become due thereunder an amount equal
885. to any brokerage, commission, or percentage so paid, or
886. agreed to be paid: (Provided, however, it is understood
887. that this covenant does not apply to the selling of goods
888. through a bona fide commercial representative employed by
889. the contractor in the regular course of his business in deal-
890. ing with customers other than the Government and whose
891. compensation is paid, in whole or in part, by commissions
892. on sales made, nor to the selling of goods through estab-
893. lished commercial or selling agents or agencies regularly
894. engaged in selling such goods.)

39. Member of Congress Clause.

895. No Member of or Delegate to Congress, or Resident
896. Commissioner, after his election or appointment or either
897. before or after he has qualified and during his continuance
898. in office, and no officer, agent, or employee of the Govern-
899. ment, shall be admitted to any share or part of this con-
900. tract or agreement, or to any benefit to arise thereupon.

901. Nothing, however, herein contained shall be construed to
902. extend to any incorporated company, where such contract
903. or agreement is made for the general benefit of such in-
904. corporation or company, as provided in Section 116 of the
905. Act of Congress approved March 4, 1909 (35 Stat., L. 1109).

IN WITNESS WHEREOF the parties have hereto signed their
names the day and year first above written. Said Company
acting in pursuance of a resolution of its Board of Di-
rectors duly adopted on October 13th, 1921.

UNITED STATES OF AMERICA

By (Sgd) Hubert Work
Secretary of the Interior

IDAHO POWER COMPANY

By (Sgd) F. F. Johnson
President

(Seal)

ATTEST:

(Sgd) Clarence T. Ward
Secy.

(Seal)

Approved except as to Exhibit "C"

(Sgd) W. G. Swendsen
Commissioner of Reclamation

Exhibit E

INDEXED

COMPARED

Instrument No. 38454

THIS INDENTURE, made this 12th day of April in the year of our Lord, one thousand nine hundred twenty-six between Idaho Power Company, a corporation organized and existing under and by virtue of the laws of the State of Maine, and fully authorized to do business in the State of Idaho, party of the first part, hereinafter designated and referred to as "Grantor", and the United States of America, party of the second part, and hereinafter designated and referred to as "Grantee".

WITNESSETH: That,

WHEREAS, under the terms and conditions of Article 9 (d) of that certain contract between the parties hereto, made and entered into under date of June 15, 1923, particular provision is made for the conveyance from the said Grantor to the said Grantee of all of Grantor's water rights, appropriations, water filings and permits at American Falls, County of Power, State of Idaho, used or intended to be used in connection with the Grantor's Power plants and proposed plants at American Falls, except those certain rights expressly reserved out of its existing appropriations and rights as independent rights to the said Grantor under the terms and conditions of the aforementioned contract between the parties hereto dated June 15, 1923, and

WHEREAS, under the terms and conditions of sub-section (s) of Article 9 of said contract of June 15, 1923, the Grantor has agreed to convey to the grantee the right to limit all other rights of the Company on Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Company at any lower points on Snake River.

AND WHEREAS, it is the desire and intent of the parties hereto that all the said Grantor's rights, appropriations, water filings and permits agreed in said contract of June 15, 1923 to be conveyed by the Grantor to the Grantee, shall be conveyed to the said Grantee wholly in accordance with the terms, provisions, reservations and exceptions set forth in the aforementioned contract between the parties hereto dated June 15, 1923, which said contract was recorded at pages 361 to 379, Book 11 of Contracts of the official records of Power County, Idaho, said contract also having been recorded August 1, 1923, pages 347 to 377 of Book F of Misc. of the official records of Bingham County, Idaho, and on November 13, 1923, beginning at page 399 of Book 2 of Agreements and Bonds of the official records of Gooding County, Idaho, and on October 10, 1923, beginning at page 299 of Book 69 of the official records of Jerome County, Idaho, and on January 22, 1924, beginning at page 268 of Book 5 (v) of Bonds and Agreements of the official records of Owyhee County, Idaho.

NOW, THEREFORE, for and in consideration of the sums of money agreed in the said contract of June 15, 1923, to be paid by the Grantee to the Grantor, the receipt of which is hereby acknowledged, the said Grantor has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said Grantee, and to its assigns and successors in interest forever all the Grantor's water rights, appropriations, water filings and permits at American Falls, for use or intended to be used in connection with the Grantor's power plants and proposed power plants at American Falls, in accordance with and subject to those certain agreements, exceptions and reservations set forth in the said contract between the parties hereto dated June 15, 1923, which said contract, recorded as aforesaid, is hereby made a part of this indenture as fully and completely as if incorporated herein.

The water rights of the Grantor transferred to the United States for use for power purposes shall be considered as impressed with a right in the United States to change the use of such water from power to irrigation, or to store the same for irrigation whenever the Secretary of the Interior shall decide that such water is required for irrigation purposes. But it is expressly agreed and understood that the water rights and rights to the use of water which it was agreed in said contract of June 15, 1923, that the Grantor should have, are reserved out of its existing appropriations and rights as independent rights under its own filings and appropriations and of the dates of priority of which the Grantor is entitled under such appropriations and are not to be considered as mere contract rights under contract with the United States. And the Grantor has further confirmed unto the said Grantee and to its assigns and successors in interest forever the right to limit all other rights of the Grantor on Snake River at whatever points and in whatever counties the same may be located insofar as and no farther than the rights allowed and granted to the United States to store and use water as provided in said contract of June 15, 1923, may interfere with any rights of the Grantor at any lower points on Snake River.

TO HAVE AND TO HOLD the same unto the said Grantee, and to its successors and assigns forever.

IN WITNESS WHEREOF, Grantor has caused its corporate name to be hereunto subscribed by its Vice President, and has caused its corporate seal to be hereunto affixed and attested by its Secretary, the day and year first above written.

(Corporate Seal)

IDAHO POWER COMPANY

By E. Summers, Assistant Secretary

By D. F. McGee, Vice President

State of New York }
County of New York } ss.

On this 13th day of April, in the year 1926, before me Eva E. Castaneda, a Notary Public in and for the County of New York, State of New York, personally appeared D. F. McGee, known to me to be the Vice President of the Corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

Exhibit F

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
Certificate of Water Right
Transfer Right No. 464

This is to certify that Idaho Power Company, a corporation of the State of Maine, qualified to do business in the State of Idaho, claims a right to the use of 253 c.f.s. of the waters of Snake River for power purposes, initiated and perfected under and by virtue of that certain water location notice by Andrew J. Tarbet, dated July 15th, 1901, and recorded in Book 4 of Water Rights at Page 266 in the records of Blaine County, Idaho, now situated in Water District #36 of the County of Power, State of Idaho, to-wit, at the hydro-electric generating station on the west side of Snake River at American Falls, Power County, State aforesaid, sometimes known as "West Side Plant"; that Idaho Power Company has become the owner of the said water right by mesne conveyances and was until recently the owner of said West Side Plant; that the waters covered by said water right were diverted from said stream in the South Half of the South Half (S $\frac{1}{2}$ S $\frac{1}{2}$) of Section 30, Township 7 South, of Range 31 E., B.M., and conducted to the said West Side Plant and there used; that the said Company discontinued the use of said waters of the said water right as used at the said West Side Plant in June, 1927, and established a new place of use for such water on the east side of Snake River at American Falls, County and State aforesaid, at what is commonly known as the American Falls East Side Power Plant of Idaho Power Company; that the new point of diversion of said waters is North 69 degrees 30 minutes West 1872.3 feet from the Southeast Corner of Section 30, in Township 7 South, of Range 31 E., B.M., and such waters are conducted to said new place of use through the forebay of the American Falls East Side Power Plant of Idaho Power Company.

Exh. B

That upon the application of said Idaho Power Company for a transfer of water right made before the Commissioner of Reclamation of the State of Idaho, and said application having been granted, the right to the use of the said 253 c.f.s. of waters so initiated and perfected by and under said water location notice at the said new place of diversion and said new place of use be, and the same hereby is, acknowledged; that the right to the use of the waters aforesaid hereby acknowledged is restricted to said American Falls East Side Power Plant of Idaho Power Company, as provided by the laws of the State of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation of Idaho at Boise, Idaho, this 17th day of June, 1929.

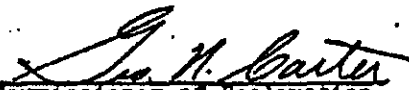

Commissioner of Reclamation

Exhibit G

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
Certificate of Water Right
Transfer Right No. 463

This is to certify that Idaho Power Company, a corporation of the State of Maine, qualified to do business in the State of Idaho, claims a right to the use of 611 c.f.s. of the waters of Snake River for power purposes, initiated and perfected under and by virtue of that certain water location notice by J. H. Brady, dated August 1, 1901, and recorded in Book 4 of Water Rights at Page 265 in the records of Blaine County, Idaho, now situated in Water District #36 of the County of Power, State of Idaho, to-wit, at the hydro-electric generating station on the island in Snake River at American Falls, Power County, State aforesaid, sometimes known as "Island Plant"; that Idaho Power Company has become the owner of the said water right by mesne conveyances and was until recently the owner of said Island Plant; that the waters covered by said water right were diverted from said stream in the South Half of the South Half ($S\frac{1}{2}S\frac{1}{2}$) of Section 30, Township 7 South, of Range 31 E., B.M., and conducted to the said Island Plant and there used; that the said Company discontinued the use of the said waters of the said water right as used at the said Island Plant in June, 1927, and established a new place of use for such water on the east side of Snake River at American Falls, County and State aforesaid, at what is commonly known as the American Falls East Side Power Plant of Idaho Power Company; that the new point of diversion of said waters is North 69 degrees 30 minutes West 1872.3 feet from the Southeast Corner of Section 30, in Township 7 South, of Range 31 E., B.M., and such waters are conducted to said new place of use through the forebay of the American Falls East Side Power Plant of Idaho Power Company.

That upon the application of said Idaho Power Company for a transfer of water right made before the Commissioner of Reclamation of the State of Idaho, and said application having been granted, the right to the use of the said 611 c.f.s. of waters so initiated and perfected by and under said water location notice at the said new place of diversion and said new place of use be, and the same hereby is, acknowledged; that the right to the use of the waters aforesaid hereby acknowledged is restricted to said American Falls East Side Power Plant of Idaho Power Company, as provided by the laws of the State of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation of Idaho at Boise, Idaho, this 17th day of June, 1929.


Commissioner of Reclamation

Exhibit H

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO
REPORT OF ENGINEER

Permit No. 16635

This proof is for Completion Works In Water District No. 36

1. Name of applicant: Idaho Power Company
 2. Source of water supply: Snake River
 3. Location of point of diversion: Is in the SW 1/4 of Section 30
 T. 7 S. R. 31 E.B.M. County of POWER

4. Describe works as they exist, giving dimensions and capacities of same: For detail description of Dam see plan filed with permit. Penstock opening consists of two rectangular openings from the face of the dam 11 feet wide and 14 feet high controlled by 2 trammel gates from thence the water is conducted to the scroll case of the turbine, thence to the tail race by a draft tube 10' 6" in diameter. Secondary regulation is had by oil operated gates at the reaction turbine. Capacity 2000 c.f.s.

5. Water is used for: Power Purposes
 6. State whether or not water has been turned into works of diversion: Yes

7. ~~List legal subdivisions of land to be irrigated, if proof is for beneficial use, give acreage of each and a brief description of the use of each (Describe manner and place of use if for other than irrigation):~~ Place of Use: At the Idaho Power Company's East Side Plant -
S. 80° 38' W. 1401 ft. distant from the N.E. Cor. of Sec. 31, T. 7 S., R. 31 E.B.M.
in the NW 1/4 of said Section.

(Submit map on attached plat, showing location and details of above description.) (See permit map.)

8. What large stream would the water here appropriated finally reach? Snake River

Remarks: This unit is one of 5 units installed at this plant it being a 7500 KVA Generator, vertical type direct connected to Allen Chalmers reaction turbine operating under about 47 feet head and requiring 2000 c.f.s. of water at full load. The entire equipment consists of four units of the type and size above described and one unit of 3750 KVA capacity. The 3750 KVA unit together with 2 of the 7500 KVA units are complete and now in operation. Of the other 2 - 7500 KVA units one is complete and being tested and the other is being assembled. However it is only one of the 7500 KVA units to which this permit applies, but it is made as supplemental and in addition to other permits.

This examination was made on the 31st day of May 1927(Signed) Myron Swenson Examiner.

16635-

Exhibit I

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

PERMIT NO. 16,635

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Myron Swendsen; 41; Civil Engineer; Boise, Idaho.

Ques. 2. Are you acquainted with Idaho Power Company, the holder of Permit No. 16,635? How long have you known him and where does he reside?

Ans. Yes, since 1916. Boise, Idaho.

Ques. 3. Have you read or heard read said Permit No. 16,635, and are you familiar with its provisions and conditions?

Ans. Yes. This deposition is made as applying to Units Nos. 4 and 5 of the American Falls Power Plant, proofs of application of water to beneficial use at the said plant
(Continued on Reverse)

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Snake River. North 69 degrees and 30 minutes West approximately 1872.3 feet from the southeast corner of Sec. 30, Twp. 7 South, Range 31 E.B.M. Gravity type dam, of concrete, about 1500 feet long and about 14 feet high, with 5-foot flashboards, seven tainter gates, of which five are 8x12 feet and two 14x30 feet, and an ice-gate 8x20 feet.

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. Diversion works in place, about 9000 second feet. More than 8600 second feet, not at full load capacity of plant.

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each sub-division in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvement which have been made as a direct result of said use.

Ans. Generating power, at American Falls Power Plant.

16635

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent

Ans. Water has been applied in generating power through two vertical single-runner turbines rated at 9000 h.p. each, direct-connected to two generators of 6000 kw. each, known as Units Nos. 4 and 5 of the plant, to the extent of more than 3800 second feet.

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. _____

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. No.

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. On January 5th, 1933, I witnessed the operation of Units Nos. 4 and 5, as described in response to Question No. 7 herein, the two said units utilizing at the time more than 3800 second feet in power generation, which was not the possible maximum use of water by these units.

(Signed) Myron Burdick

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Boise, County of Ada, State of Idaho, on this day of January 18th, A. D. 1933.

My commission expires March 27/1936

M. T. Hughes
Notary Public.

(Continuing answer to Question 3.)

having been made previously, according to the records, as to Units Nos. 1, 2 and 3 under Water Permits Nos. 4168 and 14,067.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

PERMIT NO. 16,635

Proof of Application of Water to Beneficial Use
Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Geo. N. Carter, 45, Boise, Idaho. Civil engineer. Idaho Building,

Boise, Idaho.

Ques. 2. Are you acquainted with Idaho Power Company, the holder of Permit No. 16,635? How long have you known him and where does he reside?

Ans. Yes, since 1916. Boise, Idaho.

Ques. 3. Have you read or heard read said Permit No. 16,635, and are you familiar with its provisions and conditions?

Ans. Yes. This deposition is made as applying to Units Nos. 4 and 5 of the American Falls Power Plant, proofs of application of water to beneficial use at the said plant
(continued on reverse)

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Snake River. North 69 degrees and 30 minutes West approximately 1872.3 feet from the southeast corner of Sec. 30, Twp. 7 South, Range 31 E.B.M. Gravity type dam, of concrete, about 1500 feet long and about 14 feet high, with 5-foot flashboards, seven tainter gates, of which five are 8x12 feet and two 14x30 feet, and an ice-gate 8x20 feet.

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. Diversion works in place, about 8000 second feet. More than 8600 second feet, not at full load capacity of plant.

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each sub-division in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvement which have been made as a direct result of said use.

Ans. Generating power, at American Falls Power Plant.

16635

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent

Ans. Water has been applied in generating power through two vertical single-runner turbines rated at 9000 h.p. each, direct-connected to two generators of 6000 kw. each, known as Units Nos. 4 and 5 of the plant, to the extent of more than 3600 second feet.

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. _____

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. No. _____

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. On January 5th, 1933, I witnessed the operation of Units Nos. 4 and 5, ^{as} described in response to Question No. 7 herein, the two said units utilizing at the time more than 3600 second feet in power generation, which was not the possible maximum use of water by these units.

(Signed) _____

Geo. H. Carter

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Boise, County of Ada, State of Idaho, on this day of January 18th, A. D. 1933.

My commission expires March 27/1936

M. J. Hughes
Notary Public.
Boise Idaho

(Continuing answer to Question 3.)
having been made previously, according to the records, as to Units Nos. 1, 2 and 3 under Water Permits Nos. 4168 and 14,067.

Exhibit J

FALLING WATER CONTRACT

Dated as of March 31, 1976

by and between

AMERICAN FALLS RESERVOIR DISTRICT

and

IDAHO POWER COMPANY

CONTRACT

TABLE OF CONTENTS

(This Table of Contents is not a part of this Contract and is only for convenience of reference.)

	<u>Page</u>
Parties	1
Preamble	1
ARTICLE I	
Definitions	5
ARTICLE II REPRESENTATIONS	
SECTION 2.1 General Representations	9
SECTION 2.2 Representations of the Constructing Agency	10
SECTION 2.3 Representations of the Idaho Power Company	12
ARTICLE III USE OF FALLING WATER	
SECTION 3.1 Falling Water Payments; Use of Falling Water	13
SECTION 3.2 Trustee and Paying Agent Costs	13
SECTION 3.3 Interest on Overdue Installments of Falling Water Payments	13
SECTION 3.4 Supplemental Falling Water Payments	14
SECTION 3.5 Use by Idaho Power Company of Space of Defaulted Spaceholder or Non- Participating Wateruser	15
SECTION 3.6 Net Contract; Non-Terminability	15
SECTION 3.7 Non-Termination of Falling Water Contract or Idaho Power Company Obligation	15
ARTICLE IV GOVERNMENT CONTRACT	
SECTION 4.1 Plans for the Construction of the American Falls Replacement Dam Program	17
SECTION 4.2 Permits for Construction	18
SECTION 4.3 Approval of Designs and Specifications	18
SECTION 4.4 Operation of Replacement Dam During Construction	18
SECTION 4.5 Title to Replacement Dam, Related Facilities and Water Quality Facilities in United States upon Completion	18
SECTION 4.6 Operation and Maintenance of Replacement Dam by United States	19
SECTION 4.7 Operation of Water Quality Facilities	21
SECTION 4.8 No Liability for Water Shortage or Interruption	21
SECTION 4.9 Idaho Power Company Spaceholder Contract	21
SECTION 4.10 Suspension or Termination of Use of Falling Water by Idaho Power Com- pany upon Default	21
SECTION 4.11 Termination of Government Contract and Falling Water Contract	21

**ARTICLE V
FEDERAL POWER COMMISSION LICENSE**

	<u>Page</u>
SECTION 5.1 Federal Power Commission License	22
SECTION 5.2 Documents Filed with Federal Power Commission	22
SECTION 5.3 Compliance with License	22
SECTION 5.4 Notice of Amendment to License	22
SECTION 5.5 Failure to Renew License	22

**ARTICLE VI
AUTHORIZED REPRESENTATIVES**

SECTION 6.1 Authorized Representatives	22
SECTION 6.2 Responsibilities of Authorized Representatives	23
SECTION 6.3 Procedures of Authorized Representatives	23
SECTION 6.4 Continued Responsibility of Constructing Agency	24

**ARTICLE VII
COORDINATION OF CONSTRUCTION OF REPLACEMENT DAM AND
POWERPLANT AND ASSIGNMENT OF CONSTRUCTION COSTS**

SECTION 7.1 Coordination of Construction of Powerplant with Construction of Replacement Dam	24
SECTION 7.2 Constructing Agency in Owner Capacity during Construction	24
SECTION 7.3 Construction Engineer	24
SECTION 7.4 Books and Records; Federal Power Commission Requirement	24
SECTION 7.5 Assignment of Facilities of the American Falls Replacement Dam Program	25
SECTION 7.6 Assignment of Powerplant Facilities	25
SECTION 7.7 Completion Audits	25
SECTION 7.8 Ownership of Powerplant	26
SECTION 7.9 Initial Assignment of Cost Responsibilities	26
SECTION 7.10 Final Assignment of Cost Responsibilities	26
SECTION 7.11 Arbitration	27

**ARTICLE VIII
ENGINEERING, FINANCING AND CONSTRUCTION
OF AMERICAN FALLS REPLACEMENT DAM PROGRAM**

SECTION 8.1 Cost Estimates; Plans, Designs and Specifications	27
SECTION 8.2 Approval of Plans, Designs and Specifications	27
SECTION 8.3 Issuance of Designs and Specifications; Construction Bids; Cost Estimates	27
SECTION 8.4 Cost of Construction	29
SECTION 8.5 Award or Rejection of Construction Bids	30
SECTION 8.6 Recomputation of Obligations	30
SECTION 8.7 Computation of Actual Cost of Construction	31

ARTICLE IX
ISSUANCE OF CONSTRUCTING AGENCY BONDS

	<u>Page</u>
SECTION 9.1 Bonds; Source of Payment	32
SECTION 9.2 Interim Notes; Idaho Power Company Guarantee of Interim Notes	32
SECTION 9.3 Determination of Details of Falling Water Payments, Spaceholder Bond Payments and Amount and Term of Series 1976 Bonds	32
SECTION 9.4 Details of Series 1976 Bonds	33
SECTION 9.5 Option of Redemption of Series 1976 Bonds	33
SECTION 9.6 Sale of Series 1976 Bonds	34
SECTION 9.7 Computation of Falling Water Payments and Spaceholder Bond Payments	34
SECTION 9.8 Schedules of Falling Water Payments and Spaceholder Bond Payments	35
SECTION 9.9 Delivery of Series 1976 Bonds; Disposition of Proceeds	35
SECTION 9.10 Issuance of Additional Bonds Within Initial Authorization for Completion ..	36
SECTION 9.11 Issuance of Additional Bonds in Excess of the Initial Authorization for Completion	36
SECTION 9.12 Obligation of Idaho Power Company after Initial Series of Bonds	38
SECTION 9.13 Obligation of Idaho Power Company for Supplemental Falling Water Payments with Respect to Additional Bonds for Completion	38
SECTION 9.14 Refunding Bonds	38

ARTICLE X
CONSTRUCTION OF THE POWERPLANT

SECTION 10.1 Idaho Power Company Responsible for Powerplant Construction	39
SECTION 10.2 Rights of Access to the Idaho Power Company for Construction, Operation, and Maintenance of the Powerplant	39
SECTION 10.3 Joint Facilities	39
SECTION 10.4 Financing of Powerplant by Idaho Power Company	39
SECTION 10.5 Liability	39
SECTION 10.6 Payment of Operation and Maintenance Expenses Related to Replacement Dam	39
SECTION 10.7 Supply of Energy to Operate and Maintain Replacement Dam	40

ARTICLE XI
EVENTS OF DEFAULT AND REMEDIES

SECTION 11.1 Events of Default Defined; Uncontrollable Forces	40
SECTION 11.2 Remedies on Default	41
SECTION 11.3 No Remedy Exclusive	42
SECTION 11.4 No Additional Waiver Implied by One Waiver	43

**ARTICLE XII
SPECIAL COVENANTS**

	<u>Page</u>
SECTION 12.1 Compliance with Laws, Rules and Regulations	43
SECTION 12.2 No Warranty of Suitability	43
SECTION 12.3 Rights of Access to the Constructing Agency and the United States for Construction, Operation, and Maintenance of the American Falls Replacement Dam Program	43
SECTION 12.4 Corporate Existence of Idaho Power Company; Mergers and Consolidation	43
SECTION 12.5 Approvals	44
SECTION 12.6 Financial Reports of Idaho Power Company and Constructing Agency	44
SECTION 12.7 Non-Arbitrage Certifications and Representations	44
SECTION 12.8 Non-Arbitrage Covenants	45

**ARTICLE XIII
ASSIGNMENT**

SECTION 13.1 Conditions on Assignments by Idaho Power Company	45
SECTION 13.2 Assignments or Dissolution by Constructing Agency	45

**ARTICLE XIV
GENERAL**

SECTION 14.1 Original Term; Liability of Constructing Agency	45
SECTION 14.2 Renewal Term	46
SECTION 14.3 Execution of Documents	46
SECTION 14.4 Supplements and Amendments	46
SECTION 14.5 Spaceholders Third Party Beneficiaries	46
SECTION 14.6 Notices; Manner of Giving; Duplicate Copies to United States and Trustee	47
SECTION 14.7 Benefit of Falling Water Contract	47
SECTION 14.8 Severability	47
SECTION 14.9 Amounts in Bond Fund	47
SECTION 14.10 Execution in Counterparts	47
SECTION 14.11 Choice of Law	47
SECTION 14.12 Waiver of Subrogation Rights	48
Testimonium	48
Signatures and Seals	48
Acknowledgments	49
EXHIBIT I Spaceholders	
EXHIBIT II Non-Participating Waterusers	

**FALLING WATER CONTRACT
BY AND BETWEEN
AMERICAN FALLS RESERVOIR DISTRICT
AND
IDAHO POWER COMPANY**

THIS CONTRACT, entered into this 31st day of March, 1976, between the **AMERICAN FALLS RESERVOIR DISTRICT**, an instrumentality of the State of Idaho, with its offices located in Twin Falls, Idaho, hereinafter referred to as the "Constructing Agency", and the **IDAHO POWER COMPANY**, a corporation organized under the laws of the State of Maine, authorized to do business in the State of Idaho, with its principal office therein located in Boise, Idaho, hereinafter referred to as "Idaho Power Company";

WITNESSETH:

WHEREAS, the existing American Falls Dam and Reservoir ("Existing Dam") was constructed on the Snake River in southern Idaho adjacent to the City of American Falls, Idaho, by the United States ("United States"), and was placed in operation in 1927 as a part of the Minidoka Project, Idaho-Wyoming, and the United States contracted with certain organizations and individuals ("Waterusers") for various amounts of the storage space of the Existing Dam and which Waterusers agreed to pay the United States their proportionate share of the cost of the Existing Dam and the United States has retained ownership of the Existing Dam and has operated and maintained the Existing Dam primarily for the furnishing of water for irrigation purposes; and

WHEREAS, the Existing Dam provides irrigation storage water for beneficial use on approximately 900,000 acres of land in southern Idaho to which said water is appurtenant; and

WHEREAS, the United States has determined the Existing Dam to be no longer structurally competent, and in 1972 restricted storage in the top 11.3 feet of the Existing Dam on a year-round basis for safety reasons, and additional restrictions may possibly be required to continue to meet applicable safety standards as the deterioration of the Existing Dam advances, which present and future storage restrictions have and will cause severe economic losses to the Waterusers, reductions in recreational benefits and adverse effects on fish and wildlife facilities associated with the Existing Dam; and

WHEREAS, Chapter 22 of Title 43, Idaho Code, as amended, ("State Act"), authorizes the Constructing Agency, for the purpose of preserving, restoring, protecting and maintaining rights of storage, diversion and delivery of water necessary and appurtenant to the purposes for which the Constructing Agency and other like similarly situated irrigation districts were organized: (1) to reconstruct, rehabilitate, replace and improve dams and other related structures and works together with all necessary appurtenances related thereto whether located within or without its boundaries and whether or not legal title thereto is owned by it, including without limitation as a part thereof the reconstruction and relocation of all roads, bridges and highways made necessary by reason of such reconstruction, rehabilitation, replacement and improvement, the construction of penstocks and other facilities related to hydroelectric production plant which are made necessary in order to carry out the provisions of this Falling Water Contract and facilities for flood control, public recreation and fish and wildlife mitigation purposes made necessary in order to comply with applicable state and Federal requirements; (2) to enter into all necessary agreements, contracts and other legal arrangements with the United States and its agencies and departments, the State of Idaho and its agencies, departments and political subdivisions, and public and private persons, firms, corporations and associations in order to carry out such reconstruction, rehabilitation, replacement and improvement; and (3) to issue its Bonds ("Bonds") in the manner provided therein for the purpose of paying all or part of the cost of such reconstruction, rehabilitation, replacement and improvement, together with all expenses preliminary and incidental thereto; and

WHEREAS, the State Act provides that any Bonds issued and sold pursuant to the provisions thereof shall be payable solely out of a special fund into which the Constructing Agency shall be obligated to deposit, as from time to time received: (1) the proceeds of the collection of certain assessments to be levied and collected by the Constructing Agency on lands contained within its boundaries; (2) payments pursuant to contracts to be entered into by the Constructing Agency with other irrigation districts; (3) payments pursuant to contracts to be entered into by the Construction Agency with other public or private persons, firms, corporations and associations; and (4) when so authorized by Act of Congress, the proceeds from the sale or use of falling water released from the dam to be so reconstructed, rehabilitated, replaced and improved, pursuant to a contract for the use of such falling water for power generation to be entered into by the Construction Agency with a public or private person, firm, corporation or association; and

WHEREAS, pursuant to the provisions of the Act of Congress of December 28, 1973 ("Act of December 28, 1973"), the United States, acting through the Regional Director, Pacific Northwest Region, Bureau of Reclamation ("Contracting Officer") upon authorization of the United States Secretary of the Interior ("Secretary") has entered into an agreement with the Constructing Agency ("Government Contract") of even date herewith, authorizing the Constructing Agency to finance and provide for the construction of a new dam ("Replacement Dam") and related structures and works to replace the Existing Dam (which Replacement Dam and related structures and works, together with the storage reservoir to be created behind the Replacement Dam, are hereinafter collectively referred to as the "American Falls Replacement Dam Program"); and

WHEREAS, the Government Contract provides that delivery of water is to be contingent upon the execution by each Wateruser of a contract with the Constructing Agency and the United States (which contracts are collectively referred to as "Spaceholder Contracts") providing for the repayment by such Wateruser of its proportionate share of the total costs to be incurred by the Constructing Agency for engineering, financing, designing and constructing the American Falls Replacement Dam Program not returned by this Falling Water Contract, and providing that the delivery of water to each Wateruser shall be contingent upon the fulfillment of the obligations thereunder, said Spaceholder Contracts being otherwise consistent with the terms of the various existing contracts between the Secretary and the Waterusers for the delivery of water from and the payment of costs associated with the Existing Dam; and

WHEREAS, an appropriate number of the Waterusers satisfactory to the Secretary and the Constructing Agency have entered into Spaceholder Contracts of even date herewith to pay their proportionate share of the cost of the American Falls Replacement Dam Program (which Waterusers which have entered into Spaceholder Contracts being herein referred to as "Spaceholders"); and

WHEREAS, the Act of December 28, 1973, also authorizes the Constructing Agency to contract with a non-Federal entity, as herein provided, for the use by such non-Federal entity for power generation of the falling water released from the Replacement Dam for irrigation and other purposes incidental thereto, which contract shall provide for a monetary return to the Constructing Agency to defray in part the costs of financing and constructing the American Falls Replacement Dam Program and for the coordination of the construction of hydroelectric power facilities with the construction of the Replacement Dam, provided said contract shall be approved by the Secretary and shall not impair the efficiency of the Replacement Dam to serve the other purposes of the Minidoka Project; and

WHEREAS, the State Act provides that the contract for the use of falling water may contain such provisions as are contemplated in the Act of December 28, 1973, providing for the reconstruction, rehabilitation, replacement and improvement of such dam and other related structures and works and appurtenances, the coordination of the construction of the hydroelectric power facilities, the conditions under which the non-Federal entity shall make payments to the Construction Agency, the rights and remedies of the parties to such contract in the event of a failure of the non-Federal entity to make the required payments, and the securing of all necessary permits and licenses required in connection therewith; and

WHEREAS, the Idaho Power Company is a Wateruser and is also the owner and operator of a hydroelectric generating powerplant located on the Snake River below the Existing Dam adjacent to the City of American Falls, Idaho pursuant to a license issued by the Federal Power Commission on March 31, 1975, for Project No. 2258; and

WHEREAS, the construction and operation by Idaho Power Company of a new hydroelectric generating facility ("Powerplant") attached to the Replacement Dam will increase power generation over that produced by the existing powerplant by utilizing the additional head and more of the water released from the Replacement Dam for irrigation and other purposes incidental thereto; and

WHEREAS, as contemplated in Section 4 of the Act of December 28, 1973 and in the State Act (Section 43-2201(D)(4), Idaho Code), the Idaho Power Company heretofore proposed to pay an amount necessary to amortize, at a tax exempt interest rate in 40 approximately equal annual installments, for utilization by it for power generation at the Powerplant of falling water released from the Replacement Dam for irrigation and other purposes incidental thereto, within the limitations specified in the Government Contract, \$19,550,000 of the principal amount of the cost of financing and constructing the American Falls Replacement Dam Program, and subsequently further agreed to increase such amount by the cost of the facilities included in the American Falls Replacement Dam Program for the purpose of meeting the amended State of Idaho water quality dissolved oxygen standard as approved on April 17, 1975, by the United States Environmental Protection Agency for water released from the Replacement Dam ("Water Quality Facilities") and if necessary by approximately 50% of the costs of financing and constructing the American Falls Replacement Dam Program in excess of \$38,000,000; and

WHEREAS, under the provisions of Section 4 of the Act of December 28, 1973, and the provisions of the State Act (Section 43-2201(D)(4), Idaho Code), the Constructing Agency and the Idaho Power Company have agreed to enter into this falling water contract (hereinafter referred to as the "Falling Water Contract"), but only upon satisfaction of the conditions set forth herein; and

WHEREAS, the Constructing Agency has made provision for the estimation of the cost of financing and constructing the American Falls Replacement Dam Program, and, as required in the State Act, the allocation of the costs of financing and constructing the American Falls Replacement Dam Program as between the sums to be paid pursuant to this Falling Water Contract and the Spaceholder Contracts, and has made provision for a determination as to the actual amount of Bonds of the Constructing Agency to be issued, depending upon the amounts to be prepaid pursuant to the provisions of the several Spaceholder Contracts, it being contemplated that the United States will, pursuant to Section 7 of the Act of December 28, 1973, pay, as provided in the Michaud Division, Fort Hall Indian Reservation Spaceholder Contract entered into between the Constructing Agency and the United States, the proportionate share of the Michaud Division, Fort Hall Indian Reservation of the total cost of financing and constructing the American Falls Replacement Dam Program not returned pursuant to this Falling Water Contract; and

WHEREAS, pursuant to authority contained in the State Act the Constructing Agency has heretofore authorized the issuance of not to exceed \$44,750,000 Bonds of the Constructing Agency for the purpose of paying all or part of the costs of financing and constructing the American Falls Replacement Dam Program, and further the Constructing Agency has called and held an election at which the Constructing Agency was authorized to impose assessments on lands within the Constructing Agency, approving said assessments, and was authorized to execute a Spaceholder Contract with the United States and to execute the Government Contract; and

WHEREAS, the Constructing Agency will institute proceedings pursuant to the provisions of the State Act for the purpose of obtaining confirmation decrees approving this Falling Water Contract, the Spaceholder Contracts, the Government Contract, and the levy and collection of the assessments, which confirmation proceedings will, prior to the issuance of the Bonds, be completed in accordance with the provisions of the State Act; and

WHEREAS, the Constructing Agency has entered into an agreement dated November 27, 1974, with the State of Idaho, acting by and through the Department of Transportation, Division of Highways, providing for construction of a two-lane highway on the crest of the Replacement Dam and construction of a two-lane highway bridge located immediately downstream from the Replacement Dam, and providing for the payment by the Constructing Agency of 50% of the total cost of the construction of said highway and bridge as part of the American Falls Replacement Dam Program; and

WHEREAS, the Constructing Agency has entered into an agreement dated July 2, 1974, with the Idaho Fish and Game Department providing for the payment by the Constructing Agency of costs relating to the mitigation of anticipated loss of existing recreational and fish and wildlife resources and constituting the Recreation and Fish and Wildlife Mitigation Facilities (as hereinafter defined); and

WHEREAS, it is provided in the Act of December 28, 1973, that this Falling Water Contract shall be approved by the Secretary and all requirements and conditions of the Act of December 28, 1973 have or will have been satisfied prior to the delivery of any of the Bonds of the Constructing Agency herein contemplated to be issued; and

WHEREAS, the Idaho Power Company has received a fifty (50) year license for Project No. 2736 issued March 31, 1975 by the Federal Power Commission authorizing it to construct, operate, and maintain the Powerplant; and

WHEREAS, the Constructing Agency has executed the Government Contract with the United States, as contemplated in the Act of December 28, 1973, to which Government Contract a copy of this Falling Water Contract is attached as an exhibit, and by the execution of the Government Contract the Secretary, in accordance with the provisions of the Act of December 28, 1973, approves this Falling Water Contract as though incorporated in and made a part of the Government Contract; and

WHEREAS, the Constructing Agency and the Idaho Power Company desire to provide that the issuance, sale and delivery by the Constructing Agency of its Bonds pursuant to the authority contained in the State Act, in an amount which shall be sufficient to pay the estimated cost of financing and constructing the American Falls Replacement Dam Program not paid in advance by Spaceholders pursuant to the Spaceholder Contracts, shall be a condition precedent to the obligation of the Idaho Power Company to make the payments to the Constructing Agency provided for in this Falling Water Contract in consideration of the utilization by the Idaho Power Company at the Powerplant for power generation, within the limitations specified in the Government Contract, of the falling water released from the Replacement Dam for irrigation and other purposes incidental thereto; and

WHEREAS, the Idaho Power Company and the Constructing Agency desire to enter into an arrangement hereunder whereby the Constructing Agency, having entered into the Spaceholder Contracts and the Government Contract, and as a Spaceholder having imposed assessments on lands within its boundaries, will issue and sell its Bonds for the purpose of paying the costs of financing and constructing the American Falls Replacement Dam Program not paid in advance by the Spaceholders, and whereby the Idaho Power Company in accordance with the provisions of the Federal Power Commission license, will finance, construct and own the Powerplant, and will make the payments to the Constructing Agency contemplated hereunder; and

WHEREAS, the Constructing Agency and the Idaho Power Company wish to delineate their mutual responsibilities and to set forth the terms and conditions for the use of the Falling Water by the Idaho Power Company, for the engineering, financing, construction, ownership and operation of the American Falls Replacement Dam Program and the Powerplant and the coordination of the construction of the Powerplant with the construction of the Replacement Dam;

Now, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is agreed by and between the parties hereto as follows:

ARTICLE I

DEFINITIONS

The following words and phrases shall have the following meanings, unless the context clearly indicates to the contrary:

"Act of December 28, 1973" shall mean the Act of Congress approved December 28, 1973 (87 Stat. 904).

"Additional Bonds" shall mean any additional parity Bonds authorized to be issued by the Constructing Agency pursuant to the terms and conditions of Section 207 of the Indenture.

"American Falls Replacement Dam Program" shall mean the program to be undertaken by the Constructing Agency consisting of the Replacement Dam including the two-lane highway on the crest of the Replacement Dam, the two-lane highway bridge located immediately downstream from the Replacement Dam, the Related Facilities, the Recreation and Fish and Wildlife Mitigation Facilities, and the Water Quality Facilities, to be accomplished pursuant to the Act of December 28, 1973, and under the authority of Section 43-2201(A), Idaho Code, which provides for the reconstruction, rehabilitation, replacement, and improvement of dams and other related structures and works together with all necessary appurtenances related thereto.

"Assessments" shall mean the Assessments to be levied pursuant to Title 43, Idaho Code, as contemplated in the State Act (Section 43-2201(D)(1) and (2), Idaho Code), representing the amount of benefits to accrue to each tract or subdivision in an irrigation district based upon the allocation of the Cost of Construction of the American Falls Replacement Dam Program, in the proportion that the right to the storage, diversion and delivery of water appurtenant to each such tract or subdivision bears to the total right to the storage, diversion and delivery of water from the Replacement Dam.

"Authorized Company Representative" shall mean the person at the time designated to act in behalf of the Idaho Power Company by written certificate furnished to the Contracting Officer, the Constructing Agency and the Trustee, containing the specimen signature of such person, and signed on behalf of the Idaho Power Company by its President or any Vice President thereof. Such certificate shall designate an alternate or alternates. The Authorized Company Representative may be an employee of the Idaho Power Company.

"Authorized Constructing Agency Representative" shall mean the person at the time designated to act in behalf of the Constructing Agency by written certificate furnished to the Contracting Officer, the Idaho Power Company and the Trustee, containing the specimen signature of such person, and signed on behalf of the Constructing Agency by the President of the Board, or the Vice President thereof. Such certificate shall designate an alternate or alternates. The Authorized Constructing Agency Representative may be an employee of the Constructing Agency.

"Authorized Representatives" shall mean collectively the Authorized Company Representative, the Authorized Constructing Agency Representative, and the Authorized Spaceholder Representative.

"Authorized Spaceholder Representative" shall mean the person at the time designated to act in behalf of the Spaceholders, pursuant to the provisions of Article 46 of the Spaceholder Contracts, by written certificate furnished to the Contracting Officer, the Constructing Agency, the Idaho Power Company, and the Trustee, containing the specimen signature of such person, and signed on behalf of the Spaceholders by the Chairman of the meeting of the Spaceholders at which such representative is designated. Such certificate shall designate an alternate or alternates. The Authorized Spaceholder Representative may be an employee of a Spaceholder.

"Board" shall mean the Board of Directors of the Constructing Agency.

"Bond Fund" shall mean the Bond Fund created in Section 502 of the Indenture for the purpose of paying principal of and interest on the Bonds.

"Bonds" shall mean bonds issued, and to be issued, by the Constructing Agency under authority contained in the State Act, pursuant to the Indenture to pay the costs of the American Falls Replacement Dam Program.

"Completion Date" shall mean the date of completion of the construction of the Replacement Dam, the Related Facilities and the Water Quality Facilities within the meaning of the Act of December 28, 1973, which shall be deemed to be the date upon which the Constructing Agency, the Idaho Power Company and the Trustee are given the completion notice by the Secretary as provided in Article 14(d) of the Government Contract.

"Constructing Agency" shall mean the American Falls Reservoir District, an instrumentality of the State of Idaho, being an irrigation district organized and existing under the provisions of Title 43, Idaho Code, as amended, and its successors and assigns.

"Construction Fund" shall mean the Construction Fund created by Section 602 of the Indenture for the purpose of paying the cost of financing and constructing the American Falls Replacement Dam Program.

"Construction Period" shall mean the period commencing upon the initiation of construction of the American Falls Replacement Dam Program and ending on the Completion Date.

"Construction Work Schedule" shall mean a schedule showing each item of major construction activity of the American Falls Replacement Dam Program including detailed coordination arrangements for the construction of the Powerplant with the construction of the Replacement Dam, and the time period within which each item is proposed to be started and concluded.

"Contracting Officer" shall mean the Regional Director, Pacific Northwest Region, Bureau of Reclamation, or his duly authorized representative.

"Cost of Construction" shall mean all or part of the total cost of the engineering, financing, designing and constructing of the American Falls Replacement Dam Program, and all expenses preliminary and incidental thereto, including all engineering, fiscal, and legal expenses, and costs of issuance, printing and advertising, as authorized in the Act of December 28, 1973 and the State Act and for which funds may be disbursed from the Construction Fund pursuant to Section 8.4 hereof.

"Defaulted Spaceholder(s)" shall mean the Spaceholders determined to be in default in all or any part of the Spaceholder Payments required to be made under a Spaceholder Contract, in accordance with the provisions of Article 29(a) thereof.

"Designs and Specifications" shall mean the final Designs and Specifications of any facility required pursuant to Article 10(a) of the Government Contract to be constructed by the Constructing Agency as a part of the American Falls Replacement Dam Program, as approved by the Contracting Officer pursuant to Article 10(b) of the Government Contract.

"Existing Dam" shall mean the American Falls Dam and Reservoir owned by the United States located on the Snake River in southern Idaho adjacent to the City of American Falls, Idaho.

"Falling Water" shall mean the water released from the Replacement Dam for irrigation and other purposes incidental thereto, the utilization of which during the Original Term of this Falling Water Contract, within the limitations specified in the Government Contract, is granted to the Idaho Power Company for power generation at the Powerplant in return for the Falling Water Payments to the Constructing Agency, which utilization shall be subordinate to the furnishing of water for irrigation purposes.

"Falling Water Contract" shall mean this contract entered into between the Constructing Agency and the Idaho Power Company as the same may be supplemented or amended.

"Falling Water Payments" shall mean the principal amount, plus applicable interest, to be paid to the Constructing Agency in 40 approximately equal annual Installments by the Idaho Power Company pursuant to this Falling Water Contract as a part of the consideration for the utilization for power generation at the Powerplant of the Falling Water released from the Replacement Dam.

"Government Contract" shall mean the contract of even date herewith entitled: "Contract between the United States of America and the American Falls Reservoir District for the Construction and Operation and Maintenance of the American Falls Replacement Dam Program" as the same may be supplemented or amended.

"Idaho Power Company" shall mean the Idaho Power Company, a Maine corporation authorized to do business in the State of Idaho, and its permitted successors and assigns.

"Indenture" shall mean the Indenture of Trust to be entered into between the Constructing Agency and the Trustee in connection with the issuance of the Series 1976 Bonds (including any indenture supplemental thereto).

"Independent Engineer" shall mean an engineer or engineering firm registered or licensed to practice the profession of engineering under the laws of Idaho, together with an appropriate staff and supporting equipment and who or which is not a full-time engineer of either the Constructing Agency or the Idaho Power Company.

"Interim Notes" shall mean interim notes of the Constructing Agency issued, and to be issued, under authority contained in the State Act, for the purpose of borrowing funds on a temporary basis in advance of the issuance of the Series 1976 Bonds.

"Installment" shall mean an annual payment of the principal and interest of the Falling Water Payments as such Installments are set forth in the Schedule of Falling Water Payments to be filed with the Idaho Power Company and the Trustee pursuant to the provisions of Section 9.8 hereof and which are assigned to the Trustee pursuant to Section 501 of the Indenture.

"License" shall mean the license for Project No. 2736 issued by the Federal Power Commission on March 31, 1975, and expiring on March 31, 2025, and any continuation or renewal thereof, authorizing the Idaho Power Company to construct, operate, and maintain the Powerplant.

"Minidoka Project" shall mean the Minidoka Reclamation Project of the United States, located on the Snake River in the States of Idaho and Wyoming.

"Non-Participating Wateruser(s)" shall mean the Waterusers which have not executed Spaceholder Contracts. The initial Non-Participating Waterusers are set forth in *Exhibit II* hereto. Upon the execution of a Spaceholder Contract by a Non-Participating Wateruser, such Non-Participating Wateruser shall be deemed to be a Spaceholder.

"Original Term" shall mean the duration of this Falling Water Contract, as specified in Section 14.1 hereof, ending concurrent with the expiration of the initial 50 year term of the License.

"Plan of Operation" shall mean a schedule of the storage and release of water from the Existing Dam and the Replacement Dam during the construction of the Replacement Dam.

"Plans, Designs and Specifications" shall mean the plans for the American Falls Replacement Dam Program, as set forth in Section 4.1 hereof, the Designs and Specifications, the Plan of Operation and the Construction Work Schedule.

"Powerplant" shall mean the hydroelectric generating facility, attached to the Replacement Dam, to be constructed, operated, and maintained by the Idaho Power Company in accordance with the License.

"Prepayment Fund" shall mean the Prepayment Fund created by Article 23(c) of the Spaceholder Contracts for the purpose of holding prepayments made by Spaceholders pursuant to Article 23 of the Spaceholder Contracts.

"Recreation and Fish and Wildlife Mitigation Facilities" shall mean the facilities to be included in the American Falls Replacement Dam Program pursuant to that certain agreement between the Constructing Agency and the Idaho Fish and Game Department dated July 2, 1974, to mitigate the anticipated loss of existing recreational and fish and wildlife resources.

"Related Facilities" shall mean the facilities included in the American Falls Replacement Dam Program which are required by the United States as part of the construction of the Replacement Dam and which are to be transferred to the United States to operate and maintain, consisting of the warehouse, shop, offices, scenic overlook including health and safety facilities, hydrologic and meteorologic data collection facilities.

"Renewal Term" shall mean any term following the Original Term of this Falling Water Contract, as specified in Section 14.2 hereof.

"Replacement Dam" shall mean the new dam, including the reservoir, to be constructed by the Constructing Agency on the Snake River in southern Idaho adjacent to the City of American Falls, Idaho, to replace the Existing Dam.

"Schedule of Falling Water Payments" shall mean that schedule supplied to the Idaho Power Company, pursuant to the provisions of Section 9.8 of this Falling Water Contract, showing the annual installments to be paid to the Trustee for deposit into the Bond Fund.

"Schedules of Spaceholder Bond Payments" shall mean the schedules supplied to the Spaceholders, pursuant to the provisions of Section 9.8 of this Falling Water Contract, showing the annual sums to be paid to the Trustee for deposit into the Bond Fund.

"Secretary" shall mean the Secretary of the Interior.

"Series 1976 Bonds" shall mean the initial series of Bonds to be issued by the Constructing Agency under the State Act for the purpose of paying all or part of the Cost of Construction of the American Falls Replacement Dam Program pursuant to the terms and conditions of Section 202 of the Indenture.

"Spaceholder(s)" shall mean the Waterusers which have executed Spaceholder Contracts, together with their successors and assigns. The initial Spaceholders are set forth in *Exhibit I* hereto.

"Spaceholder Bond Payments" shall mean the payments obligated to be made by the Spaceholders to the Constructing Agency pursuant to the Spaceholder Contracts to pay the Spaceholders' portion of the principal of and interest on the Bonds and which are assigned to the Trustee.

"Spaceholder Contracts" shall mean the contracts of even date herewith entered into among the United States, the Constructing Agency, and the Spaceholders for storage in the Replacement Dam and the payment of construction, operation, and maintenance costs of the American Falls Replacement Dam Program, as the same may be supplemented or amended.

"Spaceholder Payments" shall mean collectively the payments to be made by the Spaceholders pursuant to the Spaceholder Contracts as follows:

1. Spaceholder Bond Payments.
2. Spaceholder Replacement Dam Operation and Maintenance Payments.
3. Spaceholder Water Quality Facilities Operation and Maintenance Payments.
4. The fees, charges and expenses of the Trustee and any paying agent bank.

"Spaceholder Replacement Dam Operation and Maintenance Payments" shall mean the payments obligated to be made pursuant to the Spaceholder Contracts by the Spaceholders to the United States to pay the annual costs of operation and maintenance of the Replacement Dam and the Related Facilities, and to return the unpaid costs of the Existing Dam as set forth in Article 19 of the Government Contract.

"Spaceholder Water Quality Facilities Operation and Maintenance Payments" shall mean the payments obligated to be made by the Spaceholders to the Constructing Agency in accordance with paragraph 13 of the Water Quality Facilities Agreement.

"State Act" shall mean Chapter 22, Title 43, Idaho Code, as enacted by Chapter 1, Session Laws of Idaho, 1974, as amended by Chapter 48, Session Laws of Idaho, 1975.

"Supplemental Falling Water Payments" shall mean the supplemental amounts agreed to be paid to the Constructing Agency by the Idaho Power Company pursuant to this Falling Water Contract representing the obligations of Defaulted Spaceholders or of Non-Participating Water-users, or both.

"Trustee" shall mean the bank, Trustee or bank co-trustee, or either, at the time serving as such under the Indenture.

"Underwriter" or "Underwriters" shall mean Kidder, Peabody & Co. Incorporated, an investment banking firm, located in the City of New York, New York, which has agreed to submit a proposal for the purchase of the Series 1976 Bonds and, if such proposal is accepted, shall be the Underwriter of the Series 1976 Bonds, but if such proposal is not accepted, then, any investment banking firm or firms with whom the Constructing Agency shall execute a bond purchase agreement for the purchase of the Series 1976 Bonds or any Bonds issued pursuant to the provisions hereof.

"Water Quality Facilities" shall mean facilities included in the American Falls Replacement Dam Program for the purpose of meeting the amended State of Idaho water quality dissolved oxygen standard, as approved on April 17, 1975, by the United States Environmental Protection Agency, for water released from the Replacement Dam through the Powerplant, including necessary monitoring equipment to be installed immediately downstream from the tailrace of the Powerplant to measure the dissolved oxygen in the water.

"Water Quality Facilities Agreement" shall mean the agreement of even date herewith between the Constructing Agency and the Idaho Power Company providing for the construction, operation, and maintenance of the Water Quality Facilities, as the same may be supplemented or amended.

"Wateruser(s)" shall mean the organizations and individuals which have heretofore contracted for storage space in the Existing Dam.

ARTICLE II

REPRESENTATIONS

SECTION 2.1. *General Representations.* The Constructing Agency and the Idaho Power Company represent and warrant, one to the other, that:

(a) This Falling Water Contract is the contract contemplated to be entered into by the Constructing Agency, with the approval of the Secretary, with an appropriate non-Federal entity for the utilization of the Falling Water at the Powerplant for power generation, and the coordination of the construction of the Powerplant with the construction of the Replacement Dam, in accordance with Section 4 of the Act of December 28, 1973, and the State Act (Section 43-2201(D)(4), Idaho Code).

(b) This Falling Water Contract, having been approved by the Secretary as required by the Act of December 28, 1973, shall not in any way impair the efficiency of the Replacement Dam to serve the other purposes of the Minidoka Project.

(c) The Constructing Agency herein proposes to contract with the Idaho Power Company for the utilization by the Idaho Power Company of the Falling Water at the Powerplant for power generation within the limitations specified in the Government Contract and in accordance with the conditions set forth in the License, and in consideration thereof the Idaho Power Company shall make the Falling Water Payments to the Constructing Agency to help defray the Cost of Construction and shall make the Supplemental Falling Water Payments as herein contemplated. The Idaho Power Company and the Constructing Agency shall coordinate the construction of the Powerplant with the construction of the American Falls Replacement Dam Program to the mutual benefit of the Idaho Power Company and the Constructing Agency, including joint bidding if such shall be deemed desirable. As provided in Section 4 of the Act of December 28, 1973, this Falling Water Contract shall not be the subject of the limitations of Section 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1194), or of any similar limitations in any other applicable Acts of Congress.

(d) The utilization by the Idaho Power Company of the Falling Water at the Powerplant for power generation is and shall continue to be subordinate to the furnishing of water from the Replacement Dam for irrigation purposes.

(e) Less than ten per cent (10%) of the water accruing to the active storage capacity in the Replacement Dam may be contractually scheduled for release from the Replacement Dam by the Idaho Power Company, except for temporary increases following a default by a Non-Participating Wateruser or a Spaceholder as provided in Section 3.5 hereof or arising from unusually wet or dry weather in the service area of the Replacement Dam.

SECTION 2.2. *Representations of the Constructing Agency.* The Constructing Agency represents and warrants as follows:

(a) The Constructing Agency is a lawfully organized and existing irrigation district, pursuant to the provisions of Title 43, Idaho Code, as amended by the State Act, and has been such since June 1, 1923. The Constructing Agency is the "constructing agency" which is authorized to finance and provide for the construction of the American Falls Replacement Dam Program pursuant to the provisions of the Act of December 28, 1973, and the provisions of the Government Contract.

(b) The Constructing Agency is authorized to enter into the Government Contract and into this Falling Water Contract for the purpose of accomplishing the construction of the American Falls Replacement Dam Program pursuant to the provisions of the Act of December 28, 1973 and the State Act. The Constructing Agency intends to issue its Bonds pursuant to the State Act in reliance upon the obligation of Idaho Power Company during the Original Term to make the Falling Water Payments and the Supplemental Falling Water Payments and it is, therefore, necessary to recognize and provide for the rights of the holders, from time to time, of the Bonds of the Constructing Agency contemplated to be issued for the purpose of paying all or part of the Cost of Construction of the American Falls Replacement Dam Program. The Idaho Power Company, within the limitations specified in the Government Contract, will utilize for power generation at the Powerplant the Falling Water during the Original Term and it is, therefore, necessary in the Government Contract, to recognize and provide for the right of the Idaho Power Company for the continued utilization of the Falling Water after title to the Replacement Dam, the Related Facilities, and the Water Quality Facilities shall be taken by the United States, pursuant to the requirements of the Act of December 28, 1973.

(c) The Constructing Agency will not construct the Replacement Dam so as to result in an increase in the elevation of the water surface of the Replacement Dam above that maintained for the Existing Dam, i.e., 4354.5 feet above mean sea level U.S.C. & G.S. datum.

(d) The Constructing Agency has made adequate provision in the Government Contract for the correction and prevention of erosion related to the Replacement Dam or for the payment, from lawfully available funds arising from sources other than the Falling Water Payments or the Spaceholder Bond Payments, for full and adequate compensation of the adjacent landowners, including owners of land subject to a flowage easement, if such erosion cannot be corrected or prevented.

(e) Construction of the Replacement Dam will in no way alter or change the present proportionate storage rights of the Waterusers, except as provided in the Government Contract and the Spaceholder Contracts, and constitutes a reaffirmation by the United States of the existing contract rights between the Secretary and the Waterusers, except as otherwise provided in the Act of December 28, 1973.

(f) The Constructing Agency, together with the State of Idaho, has provided for compliance with the provisions of Section 2(b) and (c) of the Act of December 28, 1973 by the execution of that certain agreement dated November 27, 1974, by and between the Constructing Agency and the State of Idaho, providing for the inclusion in the American Falls Replacement Dam Program of: (i) a river crossing, consisting of a bridge for two-lane traffic, downstream from the Replacement Dam; (ii) an additional two lanes on top of the Replacement Dam; and (iii) the maintenance of an adequate two-lane, two-way crossing at or near the site of the Existing Dam during construction of the Replacement Dam.

(g) The Constructing Agency, together with the Idaho Fish and Game Department, has provided for compliance with the provisions of the Government Contract by the execution of that certain agreement dated July 2, 1974, providing for the payment by the Constructing Agency to the Idaho Fish and Game Department of the costs of the Recreation and Fish and Wildlife Mitigation Facilities included in the American Falls Replacement Dam Program.

(h) All requirements of the Act of December 28, 1973, the State Act, and the Government Contract will be complied with by the Constructing Agency in connection with the financing and construction of the American Falls Replacement Dam Program.

(i) The Constructing Agency will use its best efforts to authorize, pursuant to the provisions of the State Act as then in force, and issue the Bonds in an amount which shall be sufficient to pay the Cost of Construction not prepaid by the Spaceholders and when issued such Bonds shall be payable solely from a special fund into which the Constructing Agency will be obligated to deposit: (a) the payments by the Constructing Agency under its Spaceholder Contract of sums arising from Assessments to be levied by the Constructing Agency, pursuant to the provisions of the State Act as a Spaceholder on lands within its boundaries for its proportionate share of the Cost of Construction and allocated to such lands by the Constructing Agency pursuant to the requirements of the State Act; (b) the payments by other irrigation districts under their respective Spaceholder Contracts of sums arising from Assessments to be levied by said irrigation districts, pursuant to the provisions of the State Act, representing their respective proportionate shares of the Cost of Construction and allocated to each such irrigation district by the Constructing Agency pursuant to the requirements of the State Act; (c) the payments by the remaining Spaceholders under their respective Spaceholder Contracts of their respective proportionate shares of the Cost of Construction; and (d) the Falling Water Payments and Supplemental Falling Water Payments contemplated to be paid to the Constructing Agency by the Idaho Power Company, pursuant to the provisions of Article III hereof.

(j) The Constructing Agency will, at no additional expense to it, cooperate with the Idaho Power Company in its studies of fish mortality through the turbines and in its consultation and cooperation with other state and Federal agencies in the protection and development of the natural resources of the area of the "project" as defined in the License.

(k) The Constructing Agency will, at no additional expense to it, cooperate with the Idaho Power Company in the making of a project study of the feasibility of including the Old Island Powerhouse as a historical resource.

(l) The Constructing Agency agrees to recommend to the Fish and Game Department of the State of Idaho that the Department consider construction of a foot trail to provide public access from the Powerplant parking area under the railroad bridge to the west river bank of the tailrace area, with a portion of the funds to be provided by the Constructing Agency to the Idaho Fish and Game Department for the purpose of mitigating the anticipated loss of existing recreational and fish and wildlife resources.

(m) The Constructing Agency is not in default under any of the provisions contained in any agreement to which it is a party, and, by proper action, the Board has duly authorized its President to execute and deliver this Falling Water Contract, and its Secretary to attest and affix the seal of the Constructing Agency to this Falling Water Contract, all on behalf of the Constructing Agency.

(n) No additional or further approval, consent or authorization of any governmental unit, public agency or authority not already obtained is required by the Constructing Agency in connection with the execution of this Falling Water Contract.

SECTION 2.3. *Representations of the Idaho Power Company.* The Idaho Power Company represents and warrants as follows:

(a) The Idaho Power Company is a corporation duly incorporated under the laws of, and is in good standing in, the State of Maine; is duly qualified to do business as a foreign corporation and is in good standing in the State of Idaho; has power under the laws of Main and Idaho and its charter and by-laws to enter into this Falling Water Contract and by proper corporate action has been duly authorized to execute and deliver this Falling Water Contract.

(b) No additional or further approval, consent or authorization of any governmental unit, public agency or authority not already obtained is required by the Idaho Power Company in connection with the execution of this Falling Water Contract, except those recognized in subsection (c) hereof.

(c) The power of the Idaho Power Company to enter into the transactions contemplated by this Falling Water Contract and to carry out its obligations hereunder with respect to the Falling Water Payments and Supplemental Falling Water Payments contemplated hereunder is subject to the obtaining, by the Idaho Power Company, of approvals by any and all state and Federal regulatory agencies having jurisdiction thereof, and the Idaho Power Company covenants that it will use its best efforts to obtain such approvals prior to the issuance of any of the Series 1976 Bonds or any Interim Notes.

(d) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or, to the best of the Idaho Power Company's knowledge and information, threatened against or affecting the Idaho Power Company, or, to the best of the Idaho Power Company's knowledge and information, any basis for any such action, suit, proceeding or investigation, wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of this Falling Water Contract.

(e) Neither the execution and delivery of this Falling Water Contract, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Falling Water Contract, conflict with or result in a breach of any of the terms, conditions or provisions or any corporate restriction or any agreement or instrument to which the Idaho Power Company is now a party or by which it is bound, or constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge or encumbrance of any

nature whatsoever upon any of the property or assets of the Idaho Power Company under the terms of any instrument or agreement.

(f) The Idaho Power Company is able to and will obtain funds necessary for the construction of the Powerplant pursuant to the provisions of Article X hereof.

(g) Under date of April 25, 1975, the Idaho Power Company acknowledged acceptance of all of the provisions, terms and conditions of the License; that the License is in full force and effect, has not been rescinded or amended in any way; and, except with respect to the provisions of Articles 38, 43 and 45 hereof as to which an application for an extension of time has been filed with the Federal Power Commission, the Idaho Power Company is in compliance with all the provisions, terms and conditions of the License.

(h) That the Idaho Power Company shall commence construction of the Powerplant and complete construction of the project works described in the License within the period specified in the License or any amendment thereto.

(i) So long as any of the Bonds or Interim Notes are outstanding and unpaid, the Idaho Power Company will not acquire, on a permanent contractual basis, an additional amount of the water accruing to the active storage capacity in the Replacement Dam for the purpose of scheduled releases for generating electric energy, which together with the amount of active storage capacity presently owned by the Idaho Power Company under its Spaceholder Contract (2.6471%) would exceed eight per cent (8%) of the active storage capacity of the Replacement Dam.

ARTICLE III

USE OF FALLING WATER

SECTION 3.1. *Falling Water Payments; Use of Falling Water.* Unless sooner terminated as provided in Section 4.11 hereof, and subject only to the issuance by the Constructing Agency of its Series 1976 Bonds as contemplated by Section 9.1 hereof, in consideration of the utilization by the Idaho Power Company of the Falling Water at the Powerplant for power generation within the limitations specified in the Government Contract, the Idaho Power Company shall pay the Falling Water Payments determined in accordance with the provisions of Article IX hereof directly to the Trustee for the account of the Constructing Agency, in lawful money of the United States, at the times as determined in Section 9.3 hereof and at the Trustee's address shown in the Indenture, or at such other place as the Trustee from time to time shall designate. The Falling Water Payments, pursuant to this Falling Water Contract, shall constitute the monetary return to the Constructing Agency to defray in part the Cost of Construction contemplated to be paid in the Act of December 28, 1973. So long as the Idaho Power Company is not in default under the provisions hereof, the Idaho Power Company shall be entitled to utilize, during the term of the License or any continuation or renewal thereof, the Falling Water in accordance with the provisions of the License, at the Powerplant for power generation in connection with the operation by the United States of the Replacement Dam, within the limitations specified in Articles 16 and 18 of the Government Contract. The Secretary has, by his approval of this Falling Water Contract, evidenced his consent to such utilization, provided, that such approval does not preclude the Secretary from making any recommendations or comments in respect to the License or any continuation or renewal thereof.

SECTION 3.2. *Trustee and Paying Agent Costs.* The Idaho Power Company shall pay to the Trustee annually at the same time as it pays the Installments of the Falling Water Payments that portion of the yearly fees, charges and expenses of the Trustee and any paying agent bank contemplated in Section 1002 of the Indenture as determined in accordance with the provisions of Article IX hereof.

SECTION 3.3. *Interest on Overdue Installments of Falling Water Payments.* In the event of the failure of the Idaho Power Company to pay all or any part of any Installment of the Falling Water

Payments, such overdue Installment or portion thereof shall bear interest at the rate of the lesser of eight per cent (8%) per annum or the maximum interest rate then permitted by Idaho law.

SECTION 3.4. Supplemental Falling Water Payments. (A) The Constructing Agency and the Idaho Power Company recognize that a higher investment quality rating for the Bonds will be obtained from the respective rating agencies by the Constructing Agency (resulting in a lower net interest cost on the Bonds), if the Idaho Power Company would agree to make to the Trustee on behalf of the Constructing Agency, Supplemental Falling Water Payments in the manner contemplated in this Section 3.4, in the event that Waterusers fail to execute Spaceholder Contracts thereby becoming Non-Participating Waterusers or in the event that Spaceholders to which Article 17 of the Government Contract applies default in the making of all or any part of a Spaceholder Payment. Accordingly, within seven (7) days after the occurrence thereof, the Constructing Agency, or the Trustee on behalf of the Constructing Agency, or the Contracting Officer, as the case may be, shall give notice to the Idaho Power Company, the Contracting Officer, the Constructing Agency, the Defaulted Spaceholder and the Non-Participating Wateruser as the case may be, in the manner provided in Section 14.6 hereof, of:

- (1) any default by any Spaceholder to which Article 17 of the Government Contract applies under a Spaceholder Contract of its obligation to make all or any part of a Spaceholder Payment, or
- (2) failure to receive all or any part of a Spaceholder Payment which would have been due with respect to the space of a Non-Participating Wateruser had the Non-Participating Wateruser executed a Spaceholder Contract.

(B) The Idaho Power Company shall make a Supplemental Falling Water Payment to the Trustee, within ten (10) days after the notice provided for in (A) of this Section 3.4 has been given, which shall be sufficient:

- (1) to pay all Spaceholder Payments including penalties and interest, or any portion thereof, then in default and due under any Spaceholder Contract, and
- (2) to pay all Spaceholder Payments, including penalties and interest, or any portion thereof, which would have been due and payable with respect to the space of a Non-Participating Wateruser had the Non-Participating Wateruser executed a Spaceholder Contract and defaulted on the Spaceholder Payments becoming due and payable thereunder, as contemplated in Article 17(b) of the Government Contract.

The Supplemental Falling Water Payments shall be made by the Idaho Power Company to the Trustee at the same place as the Constructing Agency would make such payments pursuant to the Spaceholder Contracts.

(C) The Trustee shall apply the Supplemental Falling Water Payments as follows:

- (1) that portion of the Supplemental Falling Water Payment represented by Spaceholder Bond Payments attributable either to a Defaulted Spaceholder or to a Non-Participating Wateruser shall be applied to the payment of principal of and interest on the Bonds as the same become due and payable (such portion of the Supplemental Falling Water Payments shall be credited separate and apart from the obligation of the Idaho Power Company to make the Installments of Falling Water Payments);
- (2) that portion of the Supplemental Falling Water Payment represented by Spaceholder Replacement Dam Operation and Maintenance Payments attributable either to a Defaulted Spaceholder or to a Non-Participating Wateruser shall be paid to the Contracting Officer to be accounted for in accordance with the applicable provisions of the Government Contract and of the Spaceholder Contracts; and
- (3) that portion of the Supplemental Falling Water Payment represented by Spaceholder Water Quality Facilities Operation and Maintenance Payments attributable either to a Defaulted

Spaceholder or to a Non-Participating Wateruser shall be paid to the Constructing Agency to be accounted for in accordance with the applicable provisions of the Spaceholder Contracts and the Water Quality Facilities Agreement.

(D) As provided in Article 17(d) of the Government Contract, if by May 15 of each year in which the Idaho Power Company shall have made a Supplemental Falling Water Payment to the Trustee pursuant to this Section 3.4, the Contracting Officer has not repaid to the Idaho Power Company the amount of the Supplemental Falling Water Payment made by the Idaho Power Company in that year, plus interest at the lesser of eight per cent (8%) per annum or the maximum then permitted under Idaho law, the water accruing to the space of the Defaulted Spaceholders or Non-Participating Waterusers will be made available to the Idaho Power Company for power generation as provided in Section 3.5 hereof, pursuant to Article 18(b) of the Government Contract.

(E) If the use of space by any Non-Participating Wateruser is terminated as provided in Article 17 of the Government Contract or if any Spaceholder Contract is terminated as provided in Article 29 thereof, and a Spaceholder Contract providing for the disposition of such space shall have been executed, as contemplated in Article 17(e) of the Government Contract, the Idaho Power Company and the Trustee shall be notified by the Constructing Agency of the execution of such Spaceholder Contract. Whenever a Non-Participating Wateruser executes a Spaceholder Contract, the Idaho Power Company and the Trustee shall be notified by the Constructing Agency of the execution of such Spaceholder Contract. Upon the execution of any such Spaceholder Contract, the Idaho Power Company will make Supplemental Falling Water Payments with respect to a default pursuant to such Spaceholder Contract, as though such Spaceholder Contract were one of the Spaceholder Contracts initially executed by the Contracting Officer and the Constructing Agency and will treat such Spaceholder Contract as a Spaceholder Contract for all purposes of this Falling Water Contract.

SECTION 3.5. Use by Idaho Power Company of Space of Defaulted Spaceholder or Non-Participating Wateruser. The Idaho Power Company shall, subject to the limitations of Article 16 and Article 18 of the Government Contract, be entitled to schedule for release and to utilize for power generation at the Powerplant and at the downstream powerplants of the Idaho Power Company the water accruing to the storage space of a Defaulted Spaceholder or a Non-Participating Wateruser that is made available under the procedures of Article 17 of the Government Contract; provided, however, that any such water may be utilized only during the period of May 15 through December 31 of the year in which such water is made available and only under a schedule of release so that the quantity of such water released during the period of November 1 through December 31 without regard to other released water, will not result in releases of water at the Minidoka Dam and Reservoir in excess of the hydraulic capacity of the Minidoka Powerplant as it now exists or as it may be enlarged in the future.

The Idaho Power Company agrees to make the Supplemental Falling Water Payments contemplated herein, whether or not the Idaho Power Company actually uses the water for power generation during the period it has the right to use such water or whether or not any or all of such water is actually available in the Replacement Dam as a result of failure to completely fill the reservoir in the preceding storage seasons due to inadequate streamflow or as a result of the occurrence of any of the events described in Section 4.8 hereof.

SECTION 3.6. Net Contract; Non-Terminability. This is a "net contract." and the Falling Water Payments and the Supplemental Falling Water Payments required to be made hereunder or pursuant hereto by the Idaho Power Company shall be paid without notice (other than the notice contemplated by the second sentence of Section 3.4(A) hereof), or demand and without any offset, counterclaim, deduction, defense, abatement, suspension, deferment or diminution of any kind or for any reason.

SECTION 3.7. Non-Termination of Falling Water Contract or Idaho Power Company Obligation. This Falling Water Contract shall not terminate, nor shall the Idaho Power Company have any right to

terminate this Falling Water Contract or its obligations under this Falling Water Contract, or be entitled to the abatement, deferment or diminution of any Installment of the Falling Water Payments or of any of the Supplemental Falling Water Payments required to be made by the Idaho Power Company hereunder, nor shall the obligations of the Idaho Power Company be affected by reason of:

(A) any defect or impairment of the Constructing Agency's title to the Replacement Dam, or any portion thereof, during the construction of the American Falls Replacement Dam Program or the failure to complete substantially the construction of the Replacement Dam, the Related Facilities or the Water Quality Facilities;

(B) any defect or impairment of the Construction Agency's right to contract with the Idaho Power Company for the use of the Falling Water or to any right provided or intended to be provided by Constructing Agency to Idaho Power Company hereunder;

(C) the damage to or destruction of the Replacement Dam, the Water Quality Facilities or the Powerplant, or any portion thereof, by any cause, including without limitation, fire, earthquake, explosion, wind, hail or flood;

(D) the taking of the Replacement Dam or the Powerplant, or any portion thereof, or the use thereof, by any condemnation or other eminent domain proceeding;

(E) the prohibition, limitation or restriction on the construction, operation or maintenance of the Replacement Dam, the construction, operation or maintenance of the Water Quality Facilities, the construction, operation or maintenance of the Powerplant, or of the Idaho Power Company's rights hereunder to the utilization of the Falling Water at the Powerplant for power generation or the interference with the operation by the Idaho Power Company of the Powerplant or with any such right of use by any person;

(F) any eviction of the Construction Agency or the Idaho Power Company from the Replacement Dam or the Powerplant, or any portion thereof, by paramount title or otherwise or the loss of the License by the Idaho Power Company;

(G) any default on the part of the Constructing Agency under this Falling Water Contract, or under any other contract;

(H) any claim as a result of the transactions contemplated by the Indenture, the Spaceholder Contracts, the Government Contract, or of any other business dealings of the Constructing Agency or the Idaho Power Company;

(I) any mortgage, pledge, sale, assignment or transfer by the Idaho Power Company of the Powerplant or the use of the Falling Water, or any portion or portions thereof, or any portion of its rights under this Falling Water Contract, or under any contract;

(J) the impossibility or illegality of performance by any or all of the parties hereto, the parties to the Spaceholder Contracts, or the parties to the Government Contract;

(K) force majeure;

(L) any action or pending action of any court, administrative agency or other governmental authority;

(M) any order or decision of a court of competent jurisdiction, either state or Federal, which shall hold that the provisions of the Government Contract which provide for the disposition of the water accruing to the space of a Non-Participating Wateruser are invalid or in whole or in part unenforceable;

(N) any order of the Federal Power Commission pursuant to Article 48 of the License requiring the Idaho Power Company to pay annual charges for the purpose of recompensing the United States for the use, occupancy and enjoyment of the Replacement Dam; or

(O) any other cause, whether similar or dissimilar to the foregoing, any present or future law notwithstanding.

ARTICLE IV

GOVERNMENT CONTRACT

SECTION 4.1. *Plans for the Construction of the American Falls Replacement Dam Program.* Pursuant to the provisions of Article 10(a) of the Government Contract, the Constructing Agency is responsible for the preparation of the plans for the American Falls Replacement Dam Program. Such plans for the Replacement Dam shall be substantially in accordance with the construction plans for the Replacement Dam contemplated at the Engineering Review Session in San Francisco, California, on October 8 and 9, 1974, and shall provide, among other things, for the following:

(A) The construction of a Replacement Dam having:

- (1) a reservoir with an active capacity of 1,700,000 acre-feet;
- (2) a spillway, outlet works, and power penstocks capable of passing an approved design flood without exceeding a maximum water surface elevation of 4354.5 feet above mean sea level U.S.C.&G.S. datum;
- (3) a two-lane highway on the crest of the Replacement Dam adequate to meet the then current United States Department of Transportation Standards for Federal-Aid Secondary Highway Two-Lane Traffic;
- (4) appropriate controls of spillway, intake, and sluiceway gates for operation of the Replacement Dam in the event of an emergency at the Powerplant; and
- (5) sufficient portions of the Existing Dam removed to permit evacuation of the total active capacity of the Replacement Dam at a satisfactory rate to permit full utilization of the storable water.

(B) The construction of the Related Facilities.

(C) The construction, operation, and maintenance of the Water Quality Facilities.

(D) The construction, operation, and maintenance of the Recreation and Fish and Wildlife Mitigation Facilities.

(E) Provision for the relocation or replacement of the residence occupied by the Falls Irrigation District's personnel. The plan for the construction of the Replacement Dam and the Powerplant shall be such as not to interfere with the Falls Irrigation District pumping plant, nor to destroy the Old Island Powerplant unless first approved by the Contracting Officer.

(F) A proposed Construction Work Schedule and a proposed Plan of Operation.

(G) Provision for power intake structures, power penstocks, and attachment facilities to the penstocks of the Powerplant with a precise boundary line between the Replacement Dam and the Powerplant.

(H) The two-lane highway bridge located immediately downstream from the Replacement Dam adequate to meet the then current United States Department of Transportation Standards for Federal-Aid Secondary Highway Two-Lane Traffic, pursuant to the agreement dated November 23, 1973, between the United States and the State of Idaho, and the agreement dated November 27, 1974, between the Constructing Agency and the State of Idaho, and which two-lane highway bridge shall be utilized to satisfy the requirements of Section 2(c) of the Act of December 28, 1973.

SECTION 4.2. *Permits for Construction.* The Constructing Agency, pursuant to Article 11(a) of the Government Contract, has obtained from the Contracting Officer such special use permits and will, in accordance with Article 11(c) and (d) of the Government Contract, secure title to all lands not owned by the United States, or such interest therein, and all permits and licenses which are required for the Construction Agency to construct the Replacement Dam, the Related Facilities and the Water Quality Facilities designated in the Plans, Designs and Specifications approved by the Contracting Officer, as contemplated in this Falling Water Contract and in the Government Contract. The Idaho Power Company hereby grants to the Constructing Agency such licenses, permits and easements over and through the lands of the Idaho Power Company adjacent to the Replacement Dam which are within the project area as defined in the License as shall be necessary for the Constructing Agency to construct the Replacement Dam, the Related Facilities and the Water Quality Facilities according to the Plans, Designs and Specifications approved by the Contracting Officer, as contemplated in this Falling Water Contract and in the Government Contract.

SECTION 4.3. *Approval of Designs and Specifications.* As provided in the Act of December 28, 1973, and the Government Contract, the Idaho Power Company acknowledges that construction of the Replacement Dam, of each of the Related Facilities and of the Water Quality Facilities shall not be initiated until the Contracting Officer has approved in writing the Plan of Operation, the Construction Work Schedule and the applicable portion of the Designs and Specifications. The Constructing Agency and the Idaho Power Company shall abide by such Designs and Specifications, the Plan of Operation and the Construction Work Schedule.

SECTION 4.4. *Operation of Replacement Dam During Construction.* As provided in Article 13 of the Government Contract, the United States shall continue to operate and maintain the Existing Dam during the construction of the Replacement Dam. The Contracting Officer shall coordinate the storage and release of water to facilitate the construction of the Replacement Dam under the approved Plan of Operation. Daily operations under the approved Plan of Operation shall be determined by the Contracting Officer after consultation with the Constructing Agency and the Idaho Power Company, taking into account weather conditions, anticipated peak floodflows, irrigation water requirements, and construction activities.

If the Contracting Officer determines that the construction of the Replacement Dam or the Powerplant is interfering with the operation of the Existing Dam contrary to the approved Plan of Operation, the Constructing Agency, or the Idaho Power Company, or both, upon notification, shall immediately modify construction to permit the Contracting Officer to operate the Existing Dam or the Replacement Dam, or both, as contemplated in the approved Plan of Operation.

The proposed Plan of Operation provides for the evacuation of stored water from the Existing Dam and the passing of inflow in lieu of storing. The Idaho Power Company has heretofore advised the Constructing Agency and the Contracting Officer that such operation is acceptable to the Idaho Power Company.

At such time during the construction of the Replacement Dam that water control at the Existing Dam is transferred to water control at the Replacement Dam, the United States shall assume operation of the facilities which control the storage and release of water through the Replacement Dam.

SECTION 4.5. *Title to Replacement Dam, Related Facilities and Water Quality Facilities in United States upon Completion.* The Act of December 28, 1973, and the Government Contract provide that the United States shall take title to the Replacement Dam, the Related Facilities, and the Water Quality Facilities upon the determination by the Secretary that construction is substantially complete. Such title shall remain in the United States until otherwise provided by Congress. Upon substantial completion of the construction of the Replacement Dam and the Related Facilities the United States will operate and maintain the Replacement Dam and the Related Facilities as part of the Minidoka Project for the beneficial use of the water on the land within the service areas of the Spaceholders pursuant to Section 8 of the Reclamation Act of June 17, 1902 (32 Stat. 388).

The Constructing Agency will execute such conveyances of title of the Replacement Dam, the Related Facilities, and the Water Quality Facilities as shall be necessary to vest title thereto in the United States, pursuant to the requirements of the Act of December 28, 1973, and the Government Contract. The Constructing Agency agrees that it will recognize, in any such instruments or conveyances of title to the Replacement Dam, the Related Facilities and the Water Quality Facilities, the continued right of the Idaho Power Company during the term of its License or any continuation or renewal thereof, to utilize the Falling Water at the Powerplant for power generation in accordance with the provisions of the License or any continuation or renewal thereof, within the limitations specified in the Government Contract, pursuant to Section 4 of the Act of December 28, 1973, and Articles 18(a) and (b) of the Government Contract, so long as the Idaho Power Company is not in default under the provisions of this Falling Water Contract. The Idaho Power Company recognizes that title to the Replacement Dam during the term of its License or any continuation or renewal thereof, shall be vested in the United States.

As provided in Article 14(d) of the Government Contract, upon the acceptance of the final transfer review memoranda, the correction of any construction deficiencies therein specified, the submission of the documents and equipment specified in Article 14(c) of the Government Contract and the giving of notice by the Secretary to the Constructing Agency, the Trustee and the Idaho Power Company, construction of the Replacement Dam, the Related Facilities and the Water Quality Facilities shall be deemed to have been completed. The determination of completion of construction by the Secretary in accordance with the applicable provisions of the Government Contract shall be binding upon the Idaho Power Company. The Idaho Power Company agrees to cooperate with the Constructing Agency, the Secretary and the Authorized Representatives in the furnishing of any or all of the documents or copies thereof and equipment set forth in Article 14(c) of the Government Contract as shall be necessary to aid in the determination of the Secretary that construction of the Replacement Dam, the Related Facilities and the Water Quality Facilities is complete.

SECTION 4.6. *Operation and Maintenance of Replacement Dam by United States.* The Idaho Power Company agrees to the provisions of the Government Contract governing operation and maintenance of the Replacement Dam. The following Articles of the Government Contract are incorporated herein and made a part hereof as follows:

(A) Article 16 which reads:

The Replacement Dam will be operated by the United States in a manner so that (1) the present proportionate storage rights of the Spaceholders shall not be altered or changed except as provided herein and in the Spaceholder Contracts, (2) the water surface elevation of the Replacement Dam shall not exceed a maximum of 4354.5 feet above mean sea level U.S.C. & G.S. datum, and (3) the primary irrigation purpose and the incidental purposes of the Minidoka Project shall not be impaired by the subordinate utilization for power generation at the Powerplant of the water released from the Replacement Dam. The United States is not obligated to operate the Replacement Dam in a manner to have water in the Replacement Dam at elevations for power generation or to operate to increase the head in the Replacement Dam for power generation.

(B) Article 18(d) which reads:

In the event that the Contracting Officer determines that the water being released from the Replacement Dam through the Powerplant does not meet the amended State of Idaho water quality dissolved oxygen standard, as approved on April 17, 1975, by the United States Environmental Protection Agency, the Contracting Officer, after oral notice to the Idaho Power Company's American Falls Powerplant Chief Operator, may bypass part or all of such water around the Powerplant until satisfactory arrangements are made to meet such standard. The Contracting Officer in such circumstances will attempt to bypass only the amounts of water necessary to meet such standard. As contemplated in the Water Quality Facilities Agreement the Constructing Agency, the Contracting Officer, and the Idaho Power Company shall develop

operating criteria for the Water Quality Facilities and following mutual agreement on such criteria, the operation of the Water Quality Facilities or the bypassing of the water which is being released from the Replacement Dam around the Powerplant, or both, shall be in accordance with such criteria.

(C) Article 18(e) which reads:

The entitlement of the Idaho Power Company to utilize for power generation at the Powerplant the water released from the Replacement Dam under the provisions of this Article is subject at all times to scheduled interruptions for inspections, maintenance, and repairs of the Replacement Dam and at all times for any emergency operating situations relating to the Replacement Dam. In any such event, the Contracting Officer, in cooperation with the Constructing Agency and the Idaho Power Company, will endeavor to correct expeditiously such situations to permit the utilization for power generation at the Powerplant of the water released from the Replacement Dam.

(D) Article 18(f) which reads:

The Contracting Officer during the period that water is being released from the Replacement Dam for irrigation use by the Spaceholders, will provide to the Idaho Power Company from time to time schedules of anticipated water releases from the Replacement Dam in such form and detail as shall be mutually determined from time to time between the Contracting Officer and the Idaho Power Company and the Idaho Power Company will provide to the Contracting Officer its schedule of the amount of such releases anticipated by the Idaho Power Company to be used for power generation at the Powerplant. In the event the Idaho Power Company changes its schedule or in the event of an emergency, the Idaho Power Company shall promptly inform the Contracting Officer, so that the Contracting Officer can cause appropriate adjustments to be made in the outlet gates of the Replacement Dam. The providing to the Idaho Power Company by the Contracting Officer of schedules of anticipated water releases in no way guarantees that such schedules will be followed and the right to utilize the water released from the Replacement Dam for power generation at the Powerplant is subject to the provisions hereof, particularly to the limitation that the water releases from the Replacement Dam are to be determined at all times by the Contracting Officer. The Idaho Power Company, however, shall retain the right to schedule its stored water under its Spaceholder Contract and the water available to the Idaho Power Company, if any, under the provisions and limitations of (b) of this Article and schedules for the release of such water shall be provided by the Idaho Power Company.

(E) Article 22(a) which reads:

The Contracting Officer, after an opportunity has been offered to the Constructing Agency for consultation, shall have the right to make rules and regulations consistent with the provisions of this Government Contract and the laws of the United States, to add to or to modify such rules and regulations as may be deemed proper and necessary to carry out this Government Contract, and to supply necessary details of its administration which are not covered by express provisions hereof. Such rules and regulations shall (i) not limit the right of the Idaho Power Company, pursuant to the provisions of the Falling Water Contract, to utilize for power generation at the Powerplant the water released from the Replacement Dam so long as the Idaho Power Company is not in default thereunder, (ii) not limit the right of any Spaceholder to the stored water pursuant to the provisions of a Spaceholder Contract so long as the Spaceholder is not in default thereunder, or (iii) not limit the right of the Constructing Agency under the laws of the State of Idaho to collect the Falling Water Payments or the Supplemental Falling Water Payments under the Falling Water Contract or the payments due to the Constructing Agency from the Spaceholders under the Spaceholder Contracts. The Constructing Agency shall observe such rules and regulations.

SECTION 4.7. *Operation of Water Quality Facilities.* The Water Quality Facilities shall be operated and maintained in accordance with the provisions of the Water Quality Facilities Agreement as the same may be from time to time amended. The Constructing Agency shall notify the Administrator, Environmental Services Division, Idaho Department of Health and Welfare, when construction of the Replacement Dam has been commenced. The Constructing Agency shall notify the Regional Administrator, U. S. Environmental Protection Agency, Region X, upon receipt of the notice from the Contracting Officer pursuant to Section 14(d) of the Government Contract, that construction of the Replacement Dam, the Related Facilities, and the Water Quality Facilities has been completed.

SECTION 4.8. *No Liability for Water Shortage or Interruption.* No liability shall accrue against the United States or any of its officers, agents, or employees, or against the Constructing Agency, for damage, direct or indirect, arising by reason of shortages in the quantity of water available through the Existing Dam or the Replacement Dam or interruptions in water releases resulting from drought, inaccuracy in distribution, hostile diversion, prior or superior claims, accident to or failure of the Existing Dam or the Replacement Dam, or the bypassing of water around the Powerplant pursuant to Article 18(d) of the Government Contract, whether or not attributable to negligence of the officers, agents, or employees of the United States or the Constructing Agency, or other causes of whatsoever kind; nor shall the obligations of the Idaho Power Company to the Constructing Agency under this Falling Water Contract be reduced by reason of such shortages or interruptions.

SECTION 4.9. *Idaho Power Company Placeholder Contract.* The Idaho Power Company's rights, duties and obligations as a Placeholder are governed exclusively by the Placeholder Contract of even date herewith entered into among the United States, the Constructing Agency, and the Idaho Power Company, and not by the terms and conditions of this Falling Water Contract, except as provided in Section 2.3(i) hereof.

SECTION 4.10. *Suspension or Termination of Use of Falling Water by Idaho Power Company upon Default.* In the event of the failure of the Idaho Power Company to pay when due all or any part of any Installment of the Falling Water Payments or any Supplemental Falling Water Payment as contemplated in this Falling Water Contract, the Trustee, on behalf of the Constructing Agency, or the Constructing Agency, shall request the Contracting Officer to take such steps pursuant to Article 18(c) of the Government Contract as shall be necessary to suspend all rights of the Idaho Power Company to the use of the Falling Water or any water accruing to the storage space of a Defaulted Placeholder or of a Non-Participating Wateruser. The Secretary has, by his approval of this Falling Water Contract, acknowledged his duty, upon request of the Trustee on behalf of the Constructing Agency, or the Constructing Agency, to implement, or to cause to be implemented, the provisions of this Falling Water Contract and of the Government Contract which provide for the suspension or termination of the Idaho Power Company's right to the use of the Falling Water or water accruing to the storage space of a Defaulted Placeholder or of a Non-Participating Wateruser.

SECTION 4.11. *Termination of Government Contract and Falling Water Contract.* The Constructing Agency will not, during the Original Term or any Renewal Term, consent to the termination of the Government Contract pursuant to Article 9(b) of the Government Contract, so long as the Idaho Power Company is not in default under any of the provisions of this Falling Water Contract and so long as the License or any continuation or renewal thereof is in full force and effect.

The Constructing Agency shall promptly advise the Idaho Power Company of the receipt of notice of termination of the Government Contract given pursuant to the provisions of Article 9(c) of the Government Contract, in which event this Falling Water Contract shall be deemed to have been terminated unless within 60 days after the giving of such notice by the Contracting Officer, the Constructing Agency has contracted to sell the Series 1976 Bonds or Interim Notes to construct or equip the Replacement Dam.

Either the Constructing Agency or the Idaho Power Company may terminate this Falling Water Contract after April 1, 1977, by the giving of notice to the other, unless prior to the giving of such

notice or within 60 days after the giving of such notice by the Idaho Power Company the Constructing Agency has contracted to sell the Series 1976 Bonds or Interim Notes to construct or equip the Replacement Dam.

ARTICLE V

FEDERAL POWER COMMISSION LICENSE

SECTION 5.1. *Federal Power Commission License.* The Idaho Power Company has received a fifty (50) year License from the Federal Power Commission for the construction, operation, and maintenance by the Idaho Power Company of the Powerplant attached to the Replacement Dam, which License was initially conditioned upon commencement of construction of the Powerplant within two years from the effective date of the License, and completion within four years from the effective date of the License.

SECTION 5.2. *Documents Filed with Federal Power Commission.* The Idaho Power Company shall promptly file with the Federal Power Commission an executed copy of this Falling Water Contract, together with executed copies of all other contracts and documents required to be so filed in Article 36 of the License.

SECTION 5.3. *Compliance with License.* The Idaho Power Company shall comply with the provisions of the License and with the license for Project 2258 so long as the same shall be in full force and effect.

SECTION 5.4. *Notice of Amendment to License.* The Idaho Power Company shall give notice to the Contracting Officer and the Constructing Agency of any amendments to the License within 30 days after the effective date of any such amendment.

SECTION 5.5. *Failure to Renew License.* If after the expiration of the initial term of the License the Federal Power Commission fails to issue a renewal license to the Idaho Power Company, the Idaho Power Company and the Constructing Agency hereto will make all reasonable efforts to have the Federal Power Commission require as a condition to the granting of a license to a party other than the Idaho Power Company that (A) the new licensee shall pay the net investment of the Idaho Power Company in the Powerplant and such other amounts as are then permitted by law, plus reasonable severance damages of the Idaho Power Company, if any, and (B) the new licensee shall assume all contracts of the Idaho Power Company relating to the Powerplant.

ARTICLE VI

AUTHORIZED REPRESENTATIVES

SECTION 6.1. *Authorized Representatives.* Recognizing the need to coordinate the construction of the Powerplant with the construction of the American Falls Replacement Dam Program, the interests of the Spaceholders in effecting construction cost savings which will result in minimizing their Spaceholder Bond Payments, and as a means of securing effective cooperation between the Constructing Agency and the Contracting Officer, and among the Constructing Agency, the Idaho Power Company and the Spaceholders in resolving, on a prompt and orderly basis, the various administrative, technical, financing, construction, ownership and operating issues which may arise in connection with the performance of this Falling Water Contract, the Spaceholder Contracts, and the Water Quality Facilities Agreement, the Constructing Agency, the Idaho Power Company and the Spaceholders shall each name an Authorized Representative.

There shall be three Authorized Representatives, consisting of the Authorized Company Representative designated by the Idaho Power Company, the Authorized Constructing Agency Representative designated by the Constructing Agency and the Authorized Spaceholder Representative designated by the Spaceholders, in the manner provided in the Spaceholder Contracts. Each Authorized Representative

shall be authorized by the party or parties by whom he is designated to act on their behalf with respect to those matters herein provided to be responsibilities of the Authorized Representatives.

The Constructing Agency and the Idaho Power Company shall promptly notify each other and the Contracting Officer of the designation of their Authorized Representatives and of any subsequent changes in such designation. As provided in the Spaceholder Contracts, the Contracting Officer, the Idaho Power Company and the Constructing Agency shall be advised promptly of the designation of the Authorized Spaceholder Representative.

The Constructing Agency, the Idaho Power Company and the Spaceholders shall each have the power to appoint an alternate Authorized Representative.

SECTION 6.2. Responsibilities of Authorized Representatives. (A) The responsibilities of the Authorized Representatives prior to the Completion Date shall be:

(1) to approve the award of any construction or equipment contract in connection with the American Falls Replacement Dam Program;

(2) to establish general policies to be followed in the administration of this Falling Water Contract, in the construction of the American Falls Replacement Dam Program as it relates to this Falling Water Contract, and, to the extent such policies are relevant to the subject matter of this Falling Water Contract, in the construction of the Powerplant;

(3) to establish general policies and practices to be followed in the administration and coordination of the construction of the Powerplant with the construction of the Replacement Dam;

(4) to consult with the Contracting Officer concerning any policies which might hereafter be required among the Constructing Agency, the Idaho Power Company, the Spaceholders, and the Contracting Officer, or any of them, concerning the construction of the American Falls Replacement Dam Program or the construction of the Powerplant;

(5) to establish procedures for consultation with respect to notices received by the Constructing Agency from the Contracting Officer under Article 12(d) of the Government Contract; and

(6) to do such other things as are specifically assigned to the Authorized Representatives during the Construction Period.

(B) The responsibilities of the Authorized Representatives after the Completion Date shall be limited to:

(1) matters pertaining to the collection and payment of the Spaceholder Bond Payments, the Spaceholder Water Quality Facilities Operation and Maintenance Payments, the Falling Water Payments and the Supplemental Falling Water Payments, to the extent necessary;

(2) consultation concerning any policies which might hereafter be required among the Contracting Officer, the Constructing Agency, the Idaho Power Company and the Spaceholders, or any of them, concerning operation and maintenance of the Water Quality Facilities and payment of the costs thereof as provided in the Spaceholder Contracts and the Water Quality Facilities Agreement; and

(3) collection of and payment by the Idaho Power Company and the Spaceholders of the fees, charges and expenses of the Trustee and any paying agent bank contemplated in Section 1002 of the Indenture.

SECTION 6.3. Procedures of Authorized Representatives. The establishment of any procedure or practice and any other action or determination by the Authorized Representatives shall be made by unanimous agreement to become effective when signed by each of the Authorized Representatives. The Authorized Representatives shall have no authority to modify any of the provisions of this Falling Water

Contract, the Spaceholder Contracts, the Government Contract, or the Water Quality Facilities Agreement, nor shall they establish policies, rules, or regulations which are not in accordance with policies, rules, or regulations established by the Contracting Officer with respect to the construction of the American Falls Replacement Dam Program or the operation and maintenance of the Replacement Dam, the Related Facilities or the Water Quality Facilities, or which conflict with the approved Plan of Construction, the Plan of Operation or the Designs and Specifications.

SECTION 6.4. Continued Responsibility of Constructing Agency. With respect to all matters contemplated in Article IX hereof, the Constructing Agency shall consult with the Authorized Representatives in connection with the issuance of the Series 1976 Bonds, however, the Constructing Agency shall at all times comply with the State Act in the performance of its duties contemplated hereunder in connection with the issuance of the Series 1976 Bonds.

The Constructing Agency shall conform to any public bidding requirements applicable to it in connection with the construction of the American Falls Replacement Dam Program.

If, at any time, it is determined by a court of competent jurisdiction that any responsibilities assigned to the Authorized Representatives under the provisions of this Falling Water Contract constitute an undue delegation of power of the Constructing Agency, action shall be taken by the Constructing Agency, the Idaho Power Company and the Spaceholders in order to comply with the court determination and, if legally permissible and desirable under the determination of the court the Constructing Agency shall be substituted for the Authorized Representative appointed by the Constructing Agency.

ARTICLE VII

COORDINATION OF CONSTRUCTION OF REPLACEMENT DAM AND POWERPLANT AND ASSIGNMENT OF CONSTRUCTION COSTS

SECTION 7.1. Coordination of Construction of Powerplant with Construction of Replacement Dam. Pursuant to the provisions of Section 4 of the Act of December 28, 1973, the construction of the Powerplant by the Idaho Power Company shall be such that it is coordinated with the construction of the Replacement Dam pursuant to the approved Plan of Construction, Plan of Operation and the Designs and Specifications. To this end the Constructing Agency and the Idaho Power Company shall, at the earliest possible date after the execution hereof and to the extent not theretofore approved, cooperate one with the other in the submission by the Constructing Agency to the Contracting Officer for approval of the Plan of Construction and the Construction Work Schedule to the extent necessary to provide for the coordination of construction of the Powerplant with the construction of the Replacement Dam.

SECTION 7.2. Constructing Agency in Owner Capacity during Construction. The Constructing Agency, in accordance with the provisions of the Act of December 28, 1973, and the Government Contract, shall act in the capacity of owner of the Replacement Dam, the Related Facilities and the Water Quality Facilities during the Construction Period and in such capacity shall have and exercise all ownership responsibilities with respect thereto, except as provided by Article 13(c) of the Government Contract, until the United States shall take title thereto as contemplated in Article 14 of the Government Contract.

SECTION 7.3. Construction Engineer. During the Construction Period and the period of construction of the Powerplant the Constructing Agency and the Idaho Power Company shall each retain on a continuous basis as a construction engineer, an Independent Engineer of national reputation, recognized for knowledge, skill and experience in the design and construction of major dams and hydroelectric facilities, except that in lieu of an Independent Engineer Idaho Power Company may use its own engineering staff for such purpose.

SECTION 7.4. Books and Records; Federal Power Commission Requirement. The Authorized Representatives shall administer the maintenance and preservation, by the Constructing Agency of appropriate records and books of account, containing detailed entries of the Cost of Construction and, where

applicable to the construction of the American Falls Replacement Dam Program, of appropriate records and books of account of the Idaho Power Company containing detailed entries of all costs of engineering, financing and constructing the Powerplant. Accounting for all of such costs shall be in accordance with the requirements of the Federal Power Act, if any, and the requirements of the Federal Power Commission (presently FPC Form No. 6), as such requirements may be modified by the Federal Power Commission from time to time. The basic records and documents shall be made available to the Authorized Representatives, to the Contracting Officer, and to the Federal Power Commission for inspection during regular business hours upon reasonable notice and request therefor.

SECTION 7.5. Assignment of Facilities of the American Falls Replacement Dam Program. The Constructing Agency shall be responsible for the Cost of Construction of the American Falls Replacement Dam Program. In order to assist in the coordination of the construction of the Powerplant with the construction of the American Falls Replacement Dam Program and with particular reference to the determination of respective cost responsibilities as between the Constructing Agency and the Idaho Power Company, the Cost of Construction of the American Falls Replacement Dam Program shall be assigned and prorated as provided in Section 7.9 hereof to the following generally described items:

- (A) Land and Land Rights.
- (B) Structures and Improvements (Recreational Facilities, Fish and Wildlife Facilities only).
- (C) Reservoirs, Dams and Waterways, including penstock gates and facilities on the upstream side of the Replacement Dam and the penstock extending through the Replacement Dam to the boundary line on the downstream face of the Replacement Dam.
- (D) Roads, Railroads and Bridges.

SECTION 7.6. Assignment of Powerplant Facilities. The Idaho Power Company shall be responsible for the cost of construction of the Powerplant as contemplated in this Filling Water Contract. In order to assist in the coordination of the construction of the Powerplant with the construction of the American Falls Replacement Dam Program and with particular reference to the determination of the respective cost responsibilities as between the Constructing Agency and the Idaho Power Company, the cost of construction of the Powerplant shall be assigned and prorated as provided in Section 7.9 hereof to the following generally described Federal Power Commission Accounts in effect on January 1, 1970, as related to hydraulic production plant:

- No. 300—Land and Land Rights
- No. 331—Structures and Improvements (all except Recreational Facilities and Fish and Wildlife Facilities).
- No. 332—Reservoirs, Dams and Waterways (only penstock and waterways downstream from the boundary line on the downstream face of the Replacement Dam).
- No. 333—Waterwheels, Turbines and Generators.
- No. 334—Accessory Electric Equipment, including control to intake and sluice gates.
- No. 335—Miscellaneous Powerplant Equipment.
- No. 397—Communication Equipment.

SECTION 7.7. Completion Audits. Within ninety (90) days after the Completion Date, the Authorized Representatives shall be supplied by the Constructing Agency with an audit of the Construction Fund and by the Idaho Power Company an audit of construction accounts established by the Idaho Power Company in connection with the construction of the Powerplant. The cost of the audit of the Construction Fund shall be included by the Constructing Agency as a Cost of Construction. The Idaho Power Company shall be responsible for the cost of the audit of the construction accounts established in connection with the construction of the Powerplant. Each such audit shall be made by a firm of independent certified public accountants, licensed, registered and entitled to practice as such

under the laws of the State of Idaho. A copy of each audit showing the Cost of Construction of the American Falls Replacement Dam Program and the costs of construction of the Powerplant, in reasonable detail, and the amount each party has theretofore paid for such purposes, shall be furnished promptly to the Constructing Agency, the Idaho Power Company, the Trustee, the Contracting Officer, and the Spaceholders.

SECTION 7.8. Ownership of Powerplant. At all times mentioned herein and after the construction of the Powerplant by the Idaho Power Company, the ownership of the Powerplant shall be in the Idaho Power Company in accordance with the provisions of the License.

SECTION 7.9. Initial Assignment of Cost Responsibilities. At the earliest practical date after the Designs and Specifications are approved by the Contracting Officer and after the final designs and specifications for the Powerplant are available, the Authorized Representatives, in consultation with the Independent Engineers, shall identify and assign to the Constructing Agency or to the Idaho Power Company by the cost accounts described in Section 7.4 hereof, the following:

(A) the work items and quantities of materials and excavation which are identifiable as related solely to the construction of the American Falls Replacement Dam Program or to the construction of the Powerplant, and

(B) the work items and quantities of materials and excavation which are so related both to the construction of the American Falls Replacement Dam Program and the construction of the Powerplant as not to be separately identifiable.

The assignment under (B) shall be to the Constructing Agency and the Idaho Power Company in accordance with criteria mutually agreed to by the Authorized Representatives. Such criteria shall be based on the ratio of cost savings to be derived from the particular item either by the function of the Replacement Dam or by the function of the Powerplant, if determinable, otherwise equally. The initial assignment of cost responsibilities shall be reduced to writing and copies shall be supplied to the Constructing Agency, the Idaho Power Company, the Contracting Officer, and the Authorized Spaceholder Representative. Such assignment of cost responsibilities for the American Falls Replacement Dam Program shall not be construed as an allocation of such costs for other than the primary irrigation purpose and the incidental purposes of the Minidoka Project.

SECTION 7.10. Final Assignment of Cost Responsibilities. Upon receipt from the Secretary of the notice of completion of construction of the Replacement Dam, the Related Facilities, and the Water Quality Facilities as provided for in Article 14(d) of the Government Contract, the Authorized Representatives, in consultation with the Independent Engineer, shall review the initial assignment of cost responsibilities, modify the same to conform to the actual work items and quantities of materials and excavation in accordance with the criteria previously established pursuant to Article 7.9 hereof, compute the actual Cost of Construction of the American Falls Replacement Dam Program which is the responsibility of the Constructing Agency, and to the extent applicable, the actual cost of construction of the Powerplant which is the responsibility of the Idaho Power Company. The review and modification shall also take into account any sums required to be paid by or to the Constructing Agency pursuant to Section 4 of that certain agreement dated November 27, 1974, between the Constructing Agency and the State of Idaho providing for the two-lane highway on the crest of the Replacement Dam and the two-lane highway bridge located immediately downstream from the Replacement Dam. This final assignment of cost responsibilities shall be reduced to writing and copies supplied to the Constructing Agency, the Idaho Power Company, the Contracting Officer, and the Authorized Spaceholder Representative.

After completion of the above required computation, the Authorized Representatives shall give notice to the Constructing Agency of any then unreimbursed costs which were incurred by the Idaho Power Company and which are assigned pursuant to the final assignment of cost responsibilities, in

whole or in part, to the Constructing Agency. The Constructing Agency shall thereupon reimburse the Idaho Power Company from the Construction Fund for such costs as are itemized in the notice.

After completion of the above required computation, the Authorized Representatives shall give notice to the Idaho Power Company of any then unreimbursed costs which were incurred by the Constructing Agency and which are assigned pursuant to the final assignment of cost responsibilities, in whole or in part, to the Idaho Power Company. The Idaho Power Company shall thereupon reimburse the Constructing Agency for such costs as are itemized in the notice. Any such reimbursement shall be deposited into the Construction Fund.

SECTION 7.11. *Arbitration.* Any controversy or claim arising out of or relating to any assignment of cost responsibilities pursuant to this Article VII shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be introduced in any court having jurisdiction thereof.

ARTICLE VIII

ENGINEERING, FINANCING AND CONSTRUCTION OF AMERICAN FALLS REPLACEMENT DAM PROGRAM

SECTION 8.1. *Cost Estimates; Plans, Designs and Specifications.* The Constructing Agency shall arrange for the preparation of the Plans, Designs and Specifications for submission to the Contracting Officer. The Constructing Agency and the Idaho Power Company shall obtain cost estimates on the Designs and Specifications based on the initial assignment of cost responsibilities determined as provided in Section 7.9 hereof, together with such other costs and estimates as are necessary for the Constructing Agency and the Idaho Power Company to make such filings and obtain such approvals, consents and authorizations as may be necessary from any governmental unit, public agency or authority in connection with the construction of the American Falls Replacement Dam Program and the construction, operation, and maintenance of the Powerplant.

SECTION 8.2. *Approval of Plans, Designs and Specifications.* Pursuant to Article 10(b) of the Government Contract, the Constructing Agency is responsible for the preparation of Designs and Specifications for the American Falls Replacement Dam Program. As a condition precedent to the approval of the final Designs and Specifications for the construction of the Replacement Dam, the Constructing Agency must have submitted to, and received written approval from the Contracting Officer of, a Plan of Operation and the Construction Work Schedule. Final Designs and Specifications for any facility to be constructed or acquired as part of the American Falls Replacement Dam Program may not be issued by the Constructing Agency until the Contracting Officer has provided written approval thereof. The procedure for obtaining approval of the final Designs and Specifications which have not been approved prior to the execution of the Government Contract, is as set forth in Article 10(b) of the Government Contract.

SECTION 8.3. *Issuance of Designs and Specifications; Construction Bids; Cost Estimates.* Upon receipt by the Constructing Agency of the written approvals of the various Designs and Specifications by the Contracting Officer, the Constructing Agency shall issue specifications for the construction of the American Falls Replacement Dam Program and shall, in the manner then required by law, advertise for the submission of bids for the construction of the American Falls Replacement Dam Program. As contemplated in Section 10.1 hereof, the Idaho Power Company shall also request bids for construction of the Powerplant in accordance with its standard procedures. If mutually acceptable to the Constructing Agency and the Idaho Power Company, to the extent permitted by law, joint bidding for the construction of the Replacement Dam and the construction of the Powerplant shall be undertaken. After receipt of bids for the construction of the American Falls Replacement Dam Program and for the construction of the Powerplant by the respective parties hereto, but prior to the sale of the Series 1976 Bonds, the Authorized Representatives shall cause a final estimate of the Cost of Construction of the American

Falls Replacement Dam Program and a final estimate of the cost of construction of the Powerplant to be prepared. Included in the aforesaid final cost estimate shall be a separate identifiable estimate of the cost of the Water Quality Facilities to be included in the American Falls Replacement Dam Program.

After preparation of the final cost estimate for the American Falls Replacement Dam Program, the Authorized Representatives shall prepare a schedule setting forth the obligation of the Idaho Power Company, of each Spaceholder and, to the extent applicable, attributable to the space of each Non-Participating Wateruser, to share in the estimated Cost of Construction of the American Falls Replacement Dam Program¹. The schedule shall be approved by the Constructing Agency and shall be filed with the Idaho Power Company, the Contracting Officer and each Spaceholder.

The Authorized Representatives shall next determine (A) the amount of money representing prepayments of Spaceholder obligations under Article 23 of the Spaceholder Contracts which should be transferred from the Prepayment Fund to the Construction Fund and (B) the amount of the Series 1976 Bonds which should be issued and the amount of the proceeds thereof deposited into the Construction Fund in order to pay the Cost of Construction. The Authorized Representatives shall thereafter recommend to the Constructing Agency the amount of the Series 1976 Bonds which should be issued.

After the Constructing Agency has determined the amount of the Series 1976 Bonds to be issued as contemplated in Section 9.3 hereof, the Authorized Representatives shall make any necessary adjustments in the schedules above contemplated to be made and shall thereupon give notice to the Contracting Officer, in accordance with Article 15(a) of the Michaud Division, Fort Hall Indian Reservation Spaceholder Contract, of the payments which will be due thereunder. The Constructing Agency shall, on or prior to the date of delivery of the Series 1976 Bonds, transfer from the Prepayment Fund to the Construction Fund the amount above computed by the Authorized Representatives which is attributable to Spaceholders prepayments.

¹ (A) The obligation of the Idaho Power Company to share in the estimated cost of the American Falls Replacement Dam Program shall be equal to the sum of:

- (1) \$19,550,000,
- (2) the estimated cost of the Water Quality Facilities determined under the provisions of this Section 8.3, and
- (3) .486405 (see Section 9.7 hereof) times the amount by which the total estimated cost of the American Falls Replacement Dam Program exceeds \$38,000,000.

(B) The obligation of each Spaceholder and, to the extent applicable, attributable to the space of each Non-Participating Wateruser, to share in the estimated cost of the American Falls Replacement Dam Program shall be computed in accordance with the following formula:

where:

SP = the Waterusers share of the estimated cost of the American Falls Replacement Dam Program

p = a Wateruser's percentage of total space

C = \$38,000,000, less \$19,550,000 and the estimated cost of Water Quality Facilities

A = the estimated cost of American Falls Replacement Dam Program over \$38,000,000

B = Idaho Power Company's share of the estimated cost of the American Falls Replacement Dam Program over \$38,000,000

then:

$$SP = p (C + (A - B))$$

SECTION 8.4. Cost of Construction. The Cost of Construction of the American Falls Replacement Dam Program shall consist of:

(A) payment of principal of and interest on outstanding Interim Notes, if any, issued by the Constructing Agency pursuant to the authority contained in the State Act, and

(B) payments made under Section 602 of the Indenture for:

(1) payment of the initial or acceptance fee of the Trustee;

(2) payment to the Constructing Agency, Waterusers, or Idaho Power Company, as the case may be, of such amounts, if any, as shall be necessary to reimburse the Constructing Agency, Waterusers, or the Idaho Power Company in full for advances and payments made or costs incurred by them or any of them, prior to or after the execution of this Falling Water Contract, for expenditures in connection with the construction of the American Falls Replacement Dam Program, including, but not limited to preparation of the Plans, Designs and Specifications and review thereof by the Contracting Officer;

(3) all costs representing interest on advancements made in connection with the construction of the American Falls Replacement Dam Program prior to the sale of the Series 1976 Bonds;

(4) payments to the Contracting Officer for costs incurred in reviewing the Plans, Designs, Specifications and for costs incurred pursuant to Article 20(a) of the Government Contract in reviewing the construction of the American Falls Replacement Dam Program; costs for the obtaining of any insurance policy or policies by the Constructing Agency during the Construction Period; and costs related to the obtaining of all real and personal properties deemed necessary in connection with the construction of the American Falls Replacement Dam Program by the Constructing Agency, or any one or more of said expenditures;

(5) payment for labor, services, materials and supplies used or furnished in site improvement and in the construction of the American Falls Replacement Dam Program, all as provided in the Plans, Designs and Specifications, payment for the cost of the construction, acquisition and installation of utility services or other facilities, and all real and personal property deemed necessary in connection with the construction of the American Falls Replacement Dam Program and payment for the miscellaneous expenses incidental to any thereof, including the premium on any surety bond;

(6) payment of sums due to the State of Idaho pursuant to that certain agreement dated November 27, 1974, between the Constructing Agency and the State of Idaho providing for the two-lane highway on the crest of the Replacement Dam and the two-lane highway bridge located immediately downstream from the Replacement Dam;

(7) payment of the sums contemplated in Sections 1 and 3 of that certain agreement dated July 2, 1974, between the Constructing Agency and the Idaho Fish and Game Department with respect to the Recreation and Fish and Wildlife Mitigation Facilities;

(8) payment of audit fees and expenses for maintenance of records required to be kept hereunder, and of the fees, if any, for architectural, engineering and supervisory services with respect to the construction of the American Falls Replacement Dam Program;

(9) compensation to be paid to the Authorized Constructing Agency Representative and the Authorized Spaceholder Representative in connection with the performance of their duties and the reimbursement of their expenses incurred in connection with such duties;

(10) payment of expenses incurred in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to the construction of the American Falls Replacement Dam Program;

(11) payment of costs of issuance of the Bonds, and Interim Notes, any necessary litigation and confirmation proceedings, and the obtaining of all necessary permits and rulings;

(12) payment of the legal, accounting and underwriting fees and expenses and printing and engraving costs, including fees of rating agencies, incurred in connection with the authorization, sale and issuance of the Bonds and Interim Notes, the preparation of this Falling Water Contract, the Government Contract, the Spaceholder Contracts, the Water Quality Facilities Agreement, and the Indenture;

(13) payments required to be made pursuant to Article 17(g) of the Government Contract; and

(14) payment of any other costs and expenses relating to the construction of the American Falls Replacement Dam Program which would constitute a cost or expense for which moneys in the Construction Fund may be used under the Act of December 28, 1973, the State Act and the Indenture, including fees and expenses of the Trustee during the Construction Period.

SECTION 8.5. Award or Rejection of Construction Bids. If, in accordance with Section 8.3 hereof, joint bidding for the construction of the Replacement Dam and the construction of the Powerplant is undertaken by the Constructing Agency and the Idaho Power Company, each of the Authorized Representatives must concur in the award of any contract for construction or the purchase of equipment. If separate construction contracts are to be entered into for the construction of the Replacement Dam and the construction of the Powerplant, each of the Authorized Representatives must concur in the award of the contract for the construction of the Replacement Dam and in the award of the contracts for the purchase of equipment for the Replacement Dam; however the Authorized Constructing Agency Representative and the Authorized Spaceholder Representative need not concur in the award of contracts for the construction and equipping of the Powerplant. Nothing contained in this Falling Water Contract shall prevent the Board from exercising its discretion and rejecting any and all bids pertaining to the construction of the American Falls Replacement Dam Program or the purchase of equipment in connection therewith, and readvertising for bids.

SECTION 8.6. Recomputation of Obligations. If the amounts deposited into the Construction Fund pursuant to Section 8.3 hereof are or will be insufficient to pay in full the total Cost of Construction of the American Falls Replacement Dam Program, the Authorized Representatives shall from time to time revise the estimated Cost of Construction and determine the additional amounts necessary to be deposited into the Construction Fund from the Prepayment Fund and from the proceeds of Additional Bonds in order to pay the total revised Cost of Construction. The Constructing Agency shall, to the extent necessary, issue Additional Bonds as permitted under Section 207 of the Indenture for completion purposes and as contemplated in Sections 9.10 and 9.11 hereof.

In the event Additional Bonds need only be issued pursuant to Section 9.10 hereof within the initial authorization, the Authorized Representatives shall recompute the obligation of the Idaho Power Company, of each Spaceholder and, to the extent applicable, attributable to the space of each Non-Participating Wateruser, based on the revised Cost of Construction of the American Falls Replacement Dam Program and shall prepare a revised schedule of such obligations showing the increase over the initial determination for each.¹ Such schedule of obligation shall be approved by the Constructing Agency and shall be filed with the Idaho Power Company, the Contracting Officer and each Spaceholder. The Constructing Agency shall, on or prior to the date of delivery of the Additional Bonds transfer from the

¹ The respective obligations of the Idaho Power Company, each Spaceholder and, to the extent applicable, attributable to the space of each Non-Participating Waterusers, to pay the revised cost, shall be computed according to the computation set forth in Section 8.3 hereof, but substituting for the words "estimated cost" the words "revised cost" wherever they appear in the description of the computation.

Prepayment Fund to the Construction Fund the amount above computed by the Authorized Representatives which is attributable to Spaceholder prepayments. The Authorized Representatives shall also notify the Contracting Officer to increase the payments under the Michaud Division, Fort Hall Indian Reservation Spaceholder Contract accordingly.

In the event it is determined necessary to issue Additional Bonds pursuant to Section 9.11 hereof in excess of the initial authorization, and appropriate supplements to this Falling Water Contract and the Spaceholder Contracts are entered into, the Authorized Representatives shall recompute the obligation of the Idaho Power Company, of each Spaceholder and, to the extent applicable, attributable to the space of each Non-Participating Wateruser, in accordance with the principles of allocation of responsibility for the payment of the total Cost of Construction of the American Falls Replacement Dam Program in excess of the initial authorization set forth in Section 9.11 hereof and shall prepare a schedule showing the respective obligations in accordance therewith. Such schedule shall be consistent with the supplements to Spaceholder Contracts and the Falling Water Contract contemplated to be executed in Section 9.11 hereof, shall be approved by the Constructing Agency, and shall be filed with the Idaho Power Company, the Contracting Officer and each Spaceholder.

SECTION 8.7. Computation of Actual Cost of Construction. The Authorized Representatives, after computing the actual Cost of Construction as contemplated in Section 7.10 hereof, shall compute the obligations of Idaho Power Company, of each Spaceholder and, to the extent applicable, attributable to the space of each Non-Participating Wateruser, to pay the actual total Cost of Construction. If Additional Bonds are not issued under Section 9.11 hereof in excess of the initial authorization, then such obligations shall be computed in accordance with the computation set forth in Section 8.3 hereof, but substituting for the words "estimated cost" the words "total cost" wherever they appear in the description of the computation. If Additional Bonds are issued under Section 9.11 hereof in excess of the initial authorization, then such computation of the respective obligations shall be made in accordance with the provisions of Section 8.3 hereof as above modified and supplemented by the principles of allocation of the total Cost of Construction of the American Falls Replacement Dam Program set forth in Section 9.11 hereof and in any supplements to this Falling Water Contract and the Spaceholder Contracts. A schedule showing the final obligation of each to pay the actual total Cost of Construction shall be prepared, approved by the Constructing Agency and filed with the Idaho Power Company, the Contracting Officer and each Spaceholder. The Authorized Representatives shall then determine what sums, if any, should be retained in the Construction Fund in order to complete the American Falls Replacement Dam Program.

After the determination of the amounts needed to be retained in the Construction Fund in order to pay any Cost of Construction not then due and payable, the Constructing Agency shall cause a certificate to be filed with the Trustee pursuant to the provisions of Section 603 of the Indenture concerning the completion of the American Falls Replacement Dam Program. Such certificate shall direct the Trustee to dispose of any balance remaining in the Construction Fund, other than the amounts to be retained by the Trustee as provided in the certificate, as follows:

(A) That portion of the sums remaining in the Construction Fund attributable to prepayment by Spaceholders of their obligations under the Spaceholder Contracts shall be returned by the Trustee to the Spaceholders which made such prepayments in accordance with the percentage of active storage capacity of each such Spaceholder; and

(B) That portion remaining in the Construction Fund attributable to Spaceholders who elected to pay annual Spaceholder Bond Payments or to Idaho Power Company shall be transferred by the Trustee to the Bond Fund.

The Authorized Representatives shall also make a separate computation of the actual Cost of Construction, according to the assignment of such costs, of the Water Quality Facilities. This computation shall be filed with the Idaho Power Company, the Contracting Officer, and the Constructing Agency so that the computation contemplated to be made under paragraph 11 of the Water Quality Facilities Agreement can be completed by the Constructing Agency and the Idaho Power Company.

Any insurance rebates or dividends arising from policies taken out by the Constructing Agency in connection with the American Falls Replacement Dam Program shall, when received, be deposited into the Construction Fund. If any such rebates or dividends are received by the Constructing Agency subsequent to the closing of the Construction Fund, such rebates and dividends shall be distributed to the Spaceholders and the Idaho Power Company as their interests then appear.

ARTICLE IX

ISSUANCE OF CONSTRUCTING AGENCY BONDS

SECTION 9.1. Bonds; Source of Payment. In order to provide funds for payment of all or part of the Cost of Construction of the American Falls Replacement Dam Program as set forth in Section 8.4 hereof, the Constructing Agency agrees that it will use its best efforts, at one time or from time to time, to sell and cause to be delivered to the purchasers thereof, one or more series of its Bonds in the principal amounts determined as provided in Sections 9.3, 9.10 and 9.11 hereof.

The Bonds shall be issued by the Constructing Agency pursuant to the provisions of the State Act then in force, and shall be payable solely from the special fund contemplated to be established in the State Act (Section 43-2201(D), Idaho Code).

SECTION 9.2. Interim Notes; Idaho Power Company Guarantee of Interim Notes. Either at or before the time the estimated Cost of the Construction of the American Falls Replacement Dam Program has been determined pursuant to Section 8.3 hereof, the Board, pursuant to the provisions of the State Act (Section 43-2202, Idaho Code), may determine it to be advisable and to be in the interests of the Constructing Agency to borrow funds temporarily in advance of the permanent financing for the payment of all or part of the Cost of Construction of the American Falls Replacement Dam Program by the issuance of one or more series of Interim Notes of the Constructing Agency. Such Interim Notes shall be issued, sold and delivered from time to time and shall be secured as provided in the State Act (Section 43-2202, Idaho Code), and the proceeds thereof shall be deposited in a fund in the hands of a bank or trust company doing business in the State of Idaho, to be disbursed by the Constructing Agency for the purposes specified in Section 8.4 hereof.

The Constructing Agency and the Idaho Power Company recognize that in order to meet the Construction Work Schedule for the American Falls Replacement Dam Program, it may be necessary to issue Interim Notes prior to the time that the Constructing Agency could market its Series 1976 Bonds. The Idaho Power Company, therefore, agrees that, in order to improve the marketability of any Interim Notes issued by the Constructing Agency, and in order to reduce the costs of borrowing represented by such Interim Notes, it will, with the consent of all regulatory agencies having jurisdiction over the Idaho Power Company for such purpose, whether state or Federal, and with the consent of all mortgage, indenture or other lien holders whose contracts or agreements with the Idaho Power Company require such consent for such purpose, simultaneously with the issuance of any Interim Notes by the Constructing Agency, to the issuance of which Interim Notes, the Idaho Power Company shall have prior thereto indicated its approval in writing, execute a guaranty agreement to the purchasers of such Interim Notes. Under the terms of the guaranty agreement the Idaho Power Company shall unconditionally guarantee to the holders at any time, and from time to time, of the Interim Notes of the Constructing Agency (a) the full and prompt payment of the principal of any Interim Note when and as the same shall become due, whether at the stated maturity thereof, by acceleration, or call for redemption or otherwise, and (b) the full and prompt payment of any interest on any Interim Note when and as the same shall become due, and shall agree to pay all expenses and charges (including court costs and attorneys' fees) paid or incurred by the holders of the Interim Notes in collecting any of the payments so guaranteed or in enforcing the guaranty agreement by the holders of the Interim Notes.

SECTION 9.3. Determination of Details of Falling Water Payments, Spaceholder Bond Payments and Amount and Term of Series 1976 Bonds. After the estimated Cost of Construction of the American

Falls Replacement Dam Program shall have been determined as provided in Section 8.3 hereof and the Authorized Representatives shall have recommended to the Board the amount of the Series 1976 Bonds to be sold, the Board, in consultation with the Authorized Representatives, shall then determine the date upon which the first Installment of Falling Water Payments will be made and the date upon which the first Spaceholder Bond Payments will be made, the date from which interest shall be deemed to accrue on the Falling Water Payments and the date from which interest shall be deemed to accrue on the Spaceholder Bond Payments. The Board in fixing the date upon which the first Installment of the Falling Water Payments will be made shall to the extent practicable provide that the date of the first Installment shall be not more than twelve (12) months from the date of the Series 1976 Bonds. The last Installment shall be forty (40) years from the year in which the Series 1976 Bonds first begin to mature either by their terms or by option of redemption from a sinking fund. The dates and terms of the Spaceholder Bond Payments fixed by the Board shall conform to those specified for the Falling Water Payments, taking into account the applicable provisions of the Spaceholder Contracts providing for the payment of the Spaceholder Bond Payments on April 1 of each year. The Board shall fix the due date of the Installments of the Falling Water Payments so that such payments shall become due and payable by the Idaho Power Company on the first day of the month preceding the date on which principal on the Series 1976 Bonds will fall due if such Installments are to be paid annually or on the first days of the months preceding the dates on which interest and principal, or interest alone, will fall due if such Installments are to be paid semi-annually.

The Board shall then determine the term of the Series 1976 Bonds, which term shall not exceed the maximum term specified in the proceedings taken in connection with the issuance of the Bonds and which shall be coordinated with the dates upon which the Installments of the Falling Water Payments and the Spaceholder Bond Payments will be made.

The Board shall thereupon fix the amount of the Series 1976 Bonds, which amount, within the Bond authorization, shall be sufficient, together with any prepayment of obligations under Spaceholder Contracts to be transferred into the Construction Fund from the Prepayment Fund to pay the estimated Cost of Construction of the American Falls Replacement Dam Program, and sufficient to pay, as to both principal and interest, any of the Interim Notes which shall have been issued by the Constructing Agency for such purposes pursuant to the applicable provisions of the State Act and which will be outstanding on the date of delivery of the Series 1976 Bonds. In determining the amount of the Series 1976 Bonds or of any Additional Bonds to be issued, the Constructing Agency shall increase the obligation of Idaho Power Company, determined under the provisions of Article VIII hereof, by the amount necessary to round off the total amount of Series 1976 Bonds or Additional Bonds to be issued to the next highest \$5,000.

SECTION 9.4. *Details of Series 1976 Bonds.* After the amount and term of the Series 1976 Bonds shall have been determined by the Board, the Board shall thereupon fix the various details of the Series 1976 Bonds, including the date, maturity or maturities, sinking funds, serial or term nature, and option of redemption. In determining the date of the Series 1976 Bonds, the date upon which the first interest on the Series 1976 Bonds will become payable, the date upon which the first principal of the Series 1976 Bonds will become due, the maturity schedule or sinking fund of the Series 1976 Bonds, the redemption features of the Series 1976 Bonds, the Board shall take into account the requirements of Section 9.3 hereof with respect to the details of the Falling Water Payments and of the Spaceholder Bond Payments. Copies of the Indenture shall then be prepared in final form for execution. Such changes may be made in the February 1, 1976 draft of the Indenture which do not conflict with the provisions of this Falling Water Contract, the Spaceholder Contracts, the Government Contract, the Act of December 28, 1973, or the State Act and which are agreed to by the Constructing Agency and the Idaho Power Company, and bond counsel to the Constructing Agency in connection with the issuance and sale of the Series 1976 Bonds.

SECTION 9.5. *Option of Redemption of Series 1976 Bonds.* The Constructing Agency agrees that the Indenture shall provide that the Series 1976 Bonds shall be subject to redemption in whole or

in part at any time from and after ten (10) years from the date of the Series 1976 Bonds and at such premium or premiums which shall be established by the Board pursuant to the provisions of Section 9.4 hereof. If the Series 1976 Bonds are issued as term obligations with a mandatory sinking fund, the Series 1976 Bonds shall also be made subject to redemption in part on interest payment dates from the sinking fund established in the Indenture.

SECTION 9.6. *Sale of Series 1976 Bonds.* After the details of the Series 1976 Bonds shall have been fixed and determined by the Board as herein contemplated, and after the form of the Indenture shall have been agreed upon, the Constructing Agency shall sell the Series 1976 Bonds in such manner and at such price or prices as shall be determined by resolution of the Board, pursuant to the provisions of the State Act then in force. Prior to any offering of the Series 1976 Bonds the Constructing Agency shall obtain the opinion of bond counsel that interest on the Series 1976 Bonds will be excludable from Federal gross income taxes under the provisions of the Internal Revenue Code in effect on the date of the offering. No proposal or bond purchase agreement for the purchase of the Series 1976 Bonds shall be accepted or entered into by the Constructing Agency unless the Board shall determine and find that the proceeds of the Falling Water Payments together with the Spaceholder Bond Payments, computed as provided in Section 9.7 hereof, will be sufficient to pay the principal of and interest on the Series 1976 Bonds as the same shall fall due. Thereafter the Board shall complete the blanks in the Indenture and shall cause the Indenture to be executed by its duly authorized officers and the Trustee. Nothing contained in this Falling Water Contract shall prevent the Board from exercising its discretion and rejecting any and all proposals for the purchase of the Bonds, and advertising for bids or seeking new proposals for the purchase of the Bonds.

SECTION 9.7. *Computation of Falling Water Payments and Spaceholder Bond Payments.* The Falling Water Payments and the Spaceholder Bond Payments shall be calculated by the Authorized Representatives in accordance with the provisions of this Section 9.7. A schedule of the annual combined principal and interest requirements on the Series 1976 Bonds shall be prepared. The annual Installments of the Falling Water Payments shall consist of that portion of the annual combined principal and interest requirements on the Series 1976 Bonds as is represented by the proportion of the total of (A), (B) and (C) below to the principal amount of the Series 1976 Bonds:

(A) \$19,550,000,

(B) the estimated cost of the Water Quality Facilities determined under the procedures of Section 8.3 hereof, and

(C) .486405¹ times the amount by which the total estimated cost of the American Falls Replacement Dam Program exceeds \$38,000,000.

¹ The .486405 is computed according to the following formula:

(i) Where .026471 equals the portion of total active storage capacity of Idaho Power Company in the Replacement Dam as a Spaceholder;

(ii) Where B equals the Idaho Power Company portion of the excess above \$38,000,000 of the total estimated cost of the American Falls Replacement Dam Program in addition to its payment as a Spaceholder; and

(iii) Where A equals the cost of the American Falls Replacement Dam Program in excess of \$38,000,000:

$$\begin{aligned} B + .026471 (A-B) &= .5A \\ .973529B &= .473529A \\ B &= \frac{.473529}{.973529} A = .486405A \end{aligned}$$

The balance of the annual combined principal and interest requirements on the Series 1976 Bonds, after the deduction of the Falling Water Payments, shall constitute the annual Spaceholder Bond Payments, and shall be used by the Authorized Representatives in calculating the Schedule of Spaceholder Bond Payments for each of the Spaceholders which did not prepay its obligation as permitted in Article 23 of the Spaceholder Contracts and attributable to the space of each Non-Participating Wateruser to the extent applicable.¹

SECTION 9.8. *Schedules of Falling Water Payments and Spaceholder Bond Payments.* After the receipt of a proposal for the purchase of the Series 1976 Bonds and the execution of a bond purchase agreement, but before the delivery of the Series 1976 Bonds to the Underwriters, the Authorized Representatives shall calculate the details of the Falling Water Payments and the Spaceholder Bond Payments and shall prepare the Schedule of Falling Water Payments and the Schedules of Spaceholder Bond Payments, and the percentage of the fees, charges and expenses of the Trustee and any paying agent bank for which each Spaceholder and the Idaho Power Company is responsible. Schedules of Spaceholder Bond Payments shall also be prepared with respect to the space attributable to Non-Participating Waterusers.

Each schedule shall be approved by the Trustee and shall be filed with the Trustee, the Idaho Power Company, the Contracting Officer and the Constructing Agency. Each Spaceholder which did not prepay its obligation shall be furnished with its applicable Schedule of Spaceholder Bond Payments. When the Schedule of Falling Water Payments and the Schedules of Spaceholder Bond Payments have been approved by the Trustee and filed as contemplated herein, each schedule shall be conclusively binding on the Idaho Power Company and each Spaceholder.

In the event the Constructing Agency issues Additional Bonds, either under the provisions of Section 9.10 or Section 9.11 hereof, the Authorized Representatives shall prepare a supplemental Schedule of Falling Water Payments and supplemental Schedules of Spaceholder Bond Payments for each Spaceholder which does not prepay its obligation and for the space attributable to Non-Participating Waterusers, in accordance with the calculations contemplated to be made by the Authorized Representatives in Section 9.10 and Section 9.11 hereof. Such supplemental schedules shall be approved by the Trustee, shall be filed and become conclusive as above provided with respect to the original schedules.

SECTION 9.9. *Delivery of Series 1976 Bonds; Disposition of Proceeds.* After the acceptance of the proposal of the Underwriters for the purchase of the Series 1976 Bonds and the execution of a bond purchase agreement with respect thereto, the acceptance of the bids for the construction of the Replacement Dam and the execution of the contracts for the construction of the Replacement Dam, the Series

¹ Such calculation shall be made under the following formula:

where:

DS = each annual combined principal and interest requirement

DSsp = the amount of each annual combined principal and interest requirement attributable to non-prepaid space

P = total percentage of the active storage capacity attributable to non-prepaid space

p = the percentage of total storage capacity of a Spaceholder which did not prepay or attributable to a Non-Participating Wateruser ($p = P$)

K = $100\% \div P$

S = the total amount to be paid by each Spaceholder which did not prepay or attributable to the space of each Non-Participating Waterusers ($S = DSsp$)

then:

$S = (K)(p)(DSsp)$

1976 Bonds shall be delivered in accordance with the requirements of the bond purchase agreement for the purchase of the Series 1976 Bonds to be entered into between the Constructing Agency and the Underwriters, and the proceeds thereof shall be deposited in the Bond Fund and the Construction Fund, pursuant to Sections 601 and 602 of the Indenture, and disbursements shall be made from the Construction Fund, in accordance with the provisions of Section 602 of the Indenture. The Constructing Agency and the Idaho Power Company agree to cooperate, one with the other, in furnishing the Trustee with the documents referred to in Section 602 of the Indenture that are required to effect payments out of the Construction Fund.

SECTION 9.10. *Issuance of Additional Bonds Within Initial Authorization for Completion.* It is intended by the Constructing Agency that an amount of Bonds has been authorized and will be issued which will be sufficient, together with any prepayments, to pay the total cost of the American Falls Replacement Dam Program. If it is determined necessary, subsequent to the issuance of the Series 1976 Bonds, to issue all or part of the balance of any of the initially authorized but as then unissued Bonds in order to complete the payment of the total cost of the American Falls Replacement Dam Program, the Constructing Agency will, to the extent then legally permitted, issue and sell a series of Additional Bonds as permitted under Section 207 of the Indenture for completion purposes. In the event the balance of the initially authorized Bonds is issued, the annual Installments of the Falling Water Payments shall be increased by that portion of the annual combined principal and interest requirements on such series of Additional Bonds as is represented by the proportion of the total of (A) and (B) below (but as to each only to the amount of any initially authorized but as then unissued Bonds) to the principal amount of such series of Additional Bonds:

(A) any increased cost of the Water Quality Facilities determined under the procedures of Section 8.7 hereof over the estimated cost thereof determined under the procedures of Section 8.3 hereof, and

(B) .486405 (see Section 9.7 hereof) times the amount by which the total cost of the American Falls Replacement Dam Program determined under the procedures of Section 8.7 hereof less the increased cost of the Water Quality Facilities included in (A) above exceeds the higher of (1) the estimated cost of the American Falls Replacement Dam Program determined under the procedures of Section 8.3 hereof or (2) \$38,000,000.

The Spaceholder Bond Payments shall be increased in an amount sufficient to pay the balance of the annual combined principal and interest requirements on such series of Additional Bonds not returned pursuant to the increased Falling Water Payments. The calculation of such increases shall be in accordance with the formula set forth in Section 9.7 hereof. No such Additional Bonds shall be issued unless the Constructing Agency shall receive a written opinion by an attorney or firm of attorneys of recognized standing on the subject of municipal bonds to the effect that the exemption from Federal income tax of interest on the Series 1976 Bonds and any series of Additional Bonds theretofore issued will not be affected by the issuance of such series of Additional Bonds then being issued.

SECTION 9.11. *Issuance of Additional Bonds in Excess of the Initial Authorization for Completion.* If the amount of the Bonds which has been initially authorized together with any prepayments, is not sufficient to complete the payment of the total cost of the American Falls Replacement Dam Program and therefore it is determined necessary for the Constructing Agency to issue and sell a series of Additional Bonds as permitted under Section 207 of the Indenture for completion purposes in excess of the Bonds initially authorized to be issued, the Constructing Agency will, to the extent then legally permitted, issue and sell Additional Bonds in excess of the initial authorization under the conditions set forth in this Section 9.11:

(A) If the amount of such series of Additional Bonds is determined to be \$1,000,000 or less, the Idaho Power Company shall enter into a supplement to this Falling Water Contract pursuant to which the annual Installments of the Falling Water Payments shall be increased by an amount necessary to pay principal of and interest on such series of Additional Bonds.

(B) If the amount of such series of Additional Bonds is determined to be an amount over \$1,000,000 but not over \$2,000,000:

(1) the Idaho Power Company shall enter into a supplement to this Falling Water Contract pursuant to which the annual Installments of the Falling Water Payments shall be increased by an amount sufficient to pay that portion of the annual combined principal and interest requirements on such series of Additional Bonds as is represented by the proportion of the total of (a) and (b) below to the principal amount of such series of Additional Bonds:

(a) \$1,000,000,

(b) the remaining increased cost, if any, of Water Quality Facilities determined under the procedures of Section 8.7 hereof over the estimated cost thereof determined under the procedures of Section 8.3 hereof, which is in excess of the total of (i) the increased cost of the Water Quality Facilities provided for in Section 9.10(A) hereof and (ii) \$1,000,000; and

(2) supplements to Spaceholder Contracts shall be executed pursuant to which increased Spaceholder Bond Payments will be made by Spaceholders, other than Idaho Power Company, which did not prepay their obligations, in an amount sufficient to pay the balance of the annual combined principal and interest requirements on such series of Additional Bonds not returned pursuant to this Falling Water Contract as so supplemented.

(C) If the amount of such series of Additional Bonds is determined to be an amount over \$2,000,000:

(1) the Idaho Power Company shall enter into a supplement to this Falling Water Contract pursuant to which the annual Installments of the Falling Water Payments shall be increased by an amount sufficient to pay that portion of the annual combined principal and interest requirements on such series of Additional Bonds as is represented by the proportion of the total of (a), (b) and (c) below to the principal amount of such series of Additional Bonds:

(a) \$1,000,000;

(b) the remaining increased cost, if any, of the Water Quality Facilities determined under the procedures of Section 8.7 hereof over the estimated cost thereof determined under the procedures of Section 8.3 hereof which is in excess of the total of (i) the increased cost of the Water Quality Facilities provided for in Section 9.10(A) hereof and (ii) \$1,000,000; and

(c) .486405 (see Section 9.7 hereof) times the amount by which the total cost of the American Falls Replacement Dam Program determined under the procedures of Section 8.7 hereof less (i) the total increased cost of the Water Quality Facilities, (ii) the obligation of Idaho Power Company for other than Water Quality Facilities under Section 9.11(A)¹ hereof, and (iii) the obligations of Spaceholders other than Idaho Power Company under Section 9.11(B)², exceeds the higher of (1) the estimated cost of the American Falls Replacement Dam Program determined under the procedures of Section 8.3 hereof or (2) \$38,000,000;

(2) supplements to Spaceholder Contracts shall be executed pursuant to which increased Spaceholder Bond Payments will be made by Spaceholders, other than Idaho Power Company, which did not prepay their obligations, in an amount sufficient to pay that portion of the annual combined principal and interest requirements on such series of Additional Bonds as is represented by the proportion of \$1,000,000, less the amount determined pursuant to Section 9.11(B)(1)(b)² hereof to the principal amount of such series of Additional Bonds; and

¹ Calculated as if \$1,000,000 or less Additional Bonds were to be issued in excess of the initial authorization.

² Calculated as if \$2,000,000 or less Additional Bonds were to be issued in excess of the initial authorization.

(3) supplements to Spaceholder Contracts shall be executed pursuant to which increased Spaceholder Bond Payments will be made by Spaceholders, including Idaho Power Company, which did not prepay their obligations, in an amount sufficient to pay that portion of the annual combined principal and interest requirements on such series of Additional Bonds as is represented by the proportion of the principal amount of such series of Additional Bonds issued in excess of the initial authorization, less the amounts computed under Section 9.11(C)(1) and Section 9.11(C)(2) hereof, to the total principal amount of such series of Additional Bonds.

No such Additional Bonds shall be issued unless the Constructing Agency shall receive a written opinion by an attorney or firm of attorneys of recognized standing on the subject of municipal bonds to the effect that the exemption from Federal income tax of interest on the Series 1976 Bonds and any series of Additional Bonds theretofore issued will not be affected by the issuance of such series of Additional Bonds then being issued.

The principal amounts of multiple series of Additional Bonds whether or not of the initial authorization shall be aggregated for all purposes of the computations required in Sections 9.10 and 9.11 hereof.

The increased obligations of Spaceholders computed according to (B)(2), (C)(2) and (C)(3) of this Section 9.11 shall be computed for each Spaceholder with the formula set forth in Section 9.7 hereof.

SECTION 9.12. *Obligation of Idaho Power Company after Initial Series of Bonds.* If the Constructing Agency is unable to market a series of Additional Bonds as contemplated in either Section 9.10 or 9.11, the Constructing Agency and the Idaho Power Company shall nevertheless use their best efforts, to the extent then permitted by law, to issue and sell an issue of obligations of the Constructing Agency which shall be guaranteed as to principal and interest by the Idaho Power Company, to pay such additional costs of the American Falls Replacement Dam Program which are not in excess of \$1,000,000.

It is recognized that, except as specifically provided therein, the provisions of Sections 9.10 and 9.11 do not relieve the obligation of the Idaho Power Company to make increased Spaceholder Bond Payments pursuant to a supplemental Spaceholder Contract, in accordance with its percentage of total active storage capacity in the Replacement Dam.

SECTION 9.13. *Obligation of Idaho Power Company for Supplemental Falling Water Payments with Respect to Additional Bonds for Completion.* If the Constructing Agency shall issue a series of Additional Bonds, pursuant to the provisions of Section 207 of the Indenture, as contemplated in Sections 9.10 and 9.11 hereof, for the purpose of paying the costs of completing the construction of the American Falls Replacement Dam Program not paid from the proceeds of the Series 1976 Bonds, and the Constructing Agency thereafter levies additional Assessments and enters into supplementary Spaceholder Contracts with the Spaceholders increasing the amount of Spaceholder Bond Payments obligated to be made to the Constructing Agency by the Spaceholders for the purpose of repaying the Cost of Construction of the American Falls Replacement Dam Program, the Idaho Power Company shall be obligated to make Supplemental Falling Water Payments representing the obligations of the Spaceholders for the increased amounts if there is a default by any Spaceholder in the payments of such increased amounts attributable to such Additional Bonds for completion purposes and shall be entitled to the use of stored water of the Defaulted Spaceholder in accordance with the provisions of Section 3.4 hereof.

SECTION 9.14. *Refunding Bonds.* In the event that it is mutually agreed among the Constructing Agency, the Idaho Power Company and the Spaceholders obligated to make Spaceholder Bond Payments that an attempt should be made to authorize the issuance of Bonds by the Constructing Agency for the purpose of refunding all of the outstanding Series 1976 Bonds and Additional Bonds, if any, in accordance with the State Act (Sections 43-2202 and 43-2203, Idaho Code), as then in force, the Idaho Power Company and the Spaceholders obligated to make Spaceholder Bond Payments shall share the costs of such refunding effort, whether successful or unsuccessful, in direct proportion to their respective obligations to pay the annual principal and interest falling due on the Bonds to be refunded.

ARTICLE X

CONSTRUCTION OF THE POWERPLANT

SECTION 10.1. *Idaho Power Company Responsible for Powerplant Construction.* The Idaho Power Company shall be responsible for obtaining the necessary cost estimates, studies, licenses, permits, plans and specifications, construction contracts and other items necessary for the construction of the Powerplant, pursuant to the License, in coordination with the construction of the Replacement Dam, including the Plan of Operation and the Construction Work Schedule, so as not to impair the efficiency of the Replacement Dam to serve the other purposes of the Minidoka Project. The Idaho Power Company shall assume and pay all costs relating to the engineering, construction and equipping of the Powerplant, including the cost of any waterways or penstocks outside and downstream from the Replacement Dam as set forth in the approved Plans, Designs and Specifications.

SECTION 10.2. *Rights of Access to the Idaho Power Company for Construction, Operation, and Maintenance of the Powerplant.* The Idaho Power Company and its duly authorized agents shall, without charge, have such rights of access to the Replacement Dam and for ingress and egress on lands of the United States adjacent thereto as may be reasonably necessary to coordinate the construction of the Powerplant with the construction of the Replacement Dam and, after completion of construction of the Powerplant, for the proper operation and maintenance of the Powerplant by the Idaho Power Company.

SECTION 10.3. *Joint Facilities.* Any facilities which are not included in the American Falls Replacement Dam Program which may subsequently be required to be constructed, operated or maintained by the Constructing Agency and the Idaho Power Company on a joint basis must first be approved by the Authorized Representatives, and the necessary financing, construction, ownership or operation of such facilities shall be covered by special agreement between the parties hereto, to be added as an addendum to this Falling Water Contract, subject to the approval of the Contracting Officer.

SECTION 10.4. *Financing of Powerplant by Idaho Power Company.* The Idaho Power Company agrees that it will finance the construction of the Powerplant and will operate the Powerplant as contemplated in this Falling Water Contract, the License, the Government Contract and the Act of December 28, 1973. The preparation of all necessary designs and specifications for the construction of the Powerplant shall be the responsibility of the Idaho Power Company.

SECTION 10.5. *Liability.* The Constructing Agency shall be liable for its own acts and shall not be liable for the acts of others with regard to the construction, operation and maintenance of the Powerplant or with regard to the financing, construction, operation and maintenance of the American Falls Replacement Dam Program. The Constructing Agency shall require the contractor or contractors constructing the Replacement Dam, the Related Facilities and the Water Quality Facilities to carry liability insurance naming the Idaho Power Company as an additional insured party.

The Idaho Power Company shall be liable for its own acts and shall not be liable for the acts of others with regard to the construction, operation and maintenance of the Powerplant or with regard to the financing, construction, operation and maintenance of the American Falls Replacement Dam Program. The Idaho Power Company shall require the contractor constructing the Powerplant to carry liability insurance naming the Constructing Agency as an additional insured party.

SECTION 10.6. *Payment of Operation and Maintenance Expenses Related to Replacement Dam.* The Idaho Power Company shall pay directly to the Contracting Officer in each year such amounts as shall represent thirty-three per cent (33%) of the actual, direct costs of operation and maintenance of the Replacement Dam, exclusive of the reservoir. Such amounts shall be billed separately annually to the Idaho Power Company by the Contracting Officer under the same procedures, including examination of books and records, established for billing the Spaceholder Replacement Dam Operation and Maintenance Payments to the Spaceholders pursuant to the Spaceholder Contracts.

SECTION 10.7. *Supply of Energy to Operate and Maintain Replacement Dam.* As part of the consideration for the utilization by the Idaho Power Company of the Falling Water at the Powerplant for power generation within the limits specified in the Government Contract and as an additional payment for the operation and maintenance of the Replacement Dam, the Idaho Power Company shall, at a point on the line of division of ownership between the Replacement Dam and the Powerplant, which is a point accessible from the Powerplant, supply the energy required for control of the release of water from the Replacement Dam and the incidental lighting immediately adjacent thereto. (exclusive of any highway and bridge lighting), at the required voltage and at a frequency of 60 cycles per second.

ARTICLE XI

EVENTS OF DEFAULT AND REMEDIES

SECTION 11.1. *Events of Default Defined; Uncontrollable Forces.* The following shall be "events of default" under this Falling Water Contract and the terms "events of default" or "default" shall mean, whenever they are used in this Falling Water Contract, any one or more of the following events:

(a) Failure by the Idaho Power Company to pay all or any part of any Installment of the Falling Water Payments specified in Section 3.1 hereof or failure by the Idaho Power Company to pay all or any part of the Supplemental Falling Water Payments specified in Section 3.4 hereof, at the times and places specified in this Falling Water Contract and (i) continuation of said failure for a period of five (5) days after notice by telegram or, if telegraph service is not available, after notice by mail given to it by the Constructing Agency that the Installment or payment referred to in such notice has not been received, or (ii) continuation of said failure for a period of twelve (12) days, shall constitute an event of default hereunder; or

(b) Failure by the Idaho Power Company to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder other than as referred to in subsection (a) of this Section, for a period of ninety (90) days after written notice, specifying such failure and requesting that it be remedied, given to the Idaho Power Company by the Board or the Trustee, unless the Board and the Trustee shall agree in writing to extension of such time prior to its expiration; or

(c) If the Idaho Power Company shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to the general bankruptcy act, as amended, or any similar Federal or state law, or shall be adjudged a bankrupt or become insolvent, or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the adjudication of the Idaho Power Company as a bankrupt or its reorganization under the general bankruptcy act or any similar Federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof, or if a receiver, trustee or liquidator (or similar official) of the Idaho Power Company or of more than one-third of the property of the Idaho Power Company shall be appointed in any proceeding or by any Federal or state officer or agency, and shall not be discharged within sixty (60) days after such appointment; or

(d) The occurrence of an "event of default" under Section 901 of the Indenture.

The provisions of (b) of this Section are subject to the following limitations: If by reason of uncontrollable forces the Idaho Power Company is unable, in whole or in part, to carry out its agreements on its part herein contained, other than the obligations of the Idaho Power Company contained herein to make the Falling Water Payments and the Supplemental Falling Water Payments, the Idaho Power Company shall not be deemed in default during the continuance of such inability. The term "uncontrollable forces" shall mean any cause beyond the control of the Idaho Power Company and

which, by the exercise of reasonable diligence, the Idaho Power Company is unable to overcome, and shall include, but not be limited to, an act of God, fire, flood, explosion, earthquake, strike, sabotage, an act of the public enemy, civil or military authority, including court orders, injunctions, and orders of government agencies with proper jurisdiction prohibiting acts necessary to performance hereunder or permitting any such act only subject to unreasonable conditions, insurrection or riot, an act of the elements, failure of equipment, or inability to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Nothing contained herein shall be construed so as to require the Idaho Power Company to settle any strike or labor dispute in which it may be involved. If the Idaho Power Company is rendered unable to fulfill any obligation by reason of uncontrollable forces it shall exercise due diligence to remove such inability with all reasonable dispatch.

SECTION 11.2. *Remedies on Default.* Whenever any event of default referred to in Section 11.1 hereof shall have happened and be subsisting, the Constructing Agency, or the Trustee on behalf of the Constructing Agency, may take any one or more of the following remedial steps:

(a) Whenever an event of default hereunder shall have occurred and be continuing, and notwithstanding the fact that the Constructing Agency or the Trustee may have some other remedy hereunder or by virtue hereof, to give a notice of intention pursuant to the provisions of Section 14.6 hereof to terminate this Falling Water Contract on a date specified in such notice, which date shall be not less than thirty (30) days after the date of giving such notice. If the Idaho Power Company is given notice as provided herein, the Idaho Power Company's interest in, to and under this Falling Water Contract shall terminate upon the date so specified in said notice, and the Idaho Power Company thereafter shall have no right, title or interest in, to or with respect to the Falling Water but Idaho Power Company shall remain liable as hereinafter provided.

(b) In the event of any termination of this Falling Water Contract as provided in subsection (a) above, the Constructing Agency or the Trustee, as provided in the Indenture, shall forthwith, notwithstanding any other provision of this Falling Water Contract to the contrary, be entitled to recover from the Idaho Power Company, as and for liquidated damages (in lieu of all other claims for damages on account of such termination) and not as a penalty, an amount equal to the unpaid principal amount of the Bonds then outstanding as defined in the Indenture.

(c) Whenever an event of default hereunder shall have occurred and be continuing, the Constructing Agency or the Trustee on behalf of the Constructing Agency, shall have the right, then or at any time thereafter while any event of default hereunder shall continue, to request the Contracting Officer to suspend any and all rights of the Idaho Power Company to the use of the Falling Water or any water accruing to the storage space of a Defaulted Spaceholder or of a Non-Participating Wateruser upon not less than twelve (12) days' notice to the Idaho Power Company given as provided in Section 14.6 hereof. The Contracting Officer, acting with the consent of either the Constructing Agency or the Trustee, may, without further notice to the Idaho Power Company, suspend such rights of the Idaho Power Company and grant any or all of the suspended rights to any person for the duration of the suspension. Idaho Power Company agrees that, in addition to its other obligations under this Falling Water Contract, upon demand it will pay to the Trustee, the Constructing Agency and the Contracting Officer all expenses incurred in connection with such suspension and any grant of the suspended rights to another person, and that the Idaho Power Company will be and remain liable to make all payments, when due, required to be made by the Idaho Power Company hereunder, without regard to any such suspension and as if any suspended rights exercised by another person were exercised by the Idaho Power Company. The Constructing Agency, or the Trustee acting on behalf of the Constructing Agency, shall have the right from time to time to begin and maintain successive proceedings against the Idaho Power Company for the recovery of damages or for a sum equal to any and all installments of the Falling Water Payments and Supplemental Falling Water Payments and any other payments required to be made by the Idaho Power Company pursuant to this Falling Water Contract, and to recover the same upon the liability of the Idaho Power Company herein provided. Nothing herein contained

shall be deemed to require the Constructing Agency or the Trustee to defer commencement of any such proceedings until the end of the Original Term of this Falling Water Contract.

(d) No suspension of any or all of the Idaho Power Company's rights to the use of the Falling Water under this Falling Water Contract shall be construed as an election on the part of the Constructing Agency, the Trustee or the Contracting Officer to terminate the Idaho Power Company's interest in, to and under this Falling Water Contract unless a notice of intention be given to the Idaho Power Company or unless such termination be decreed at the instance of the Constructing Agency or the Trustee by a court of competent jurisdiction.

(e) The Constructing Agency, or the Trustee on behalf of the Constructing Agency, may take whatever action at law or in equity may appear necessary or desirable to collect the Falling Water Payments, or the Supplemental Falling Water Payments, or any other amounts payable by Idaho Power Company hereunder, then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Idaho Power Company under this Falling Water Contract.

Any amounts collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture.

SECTION 11.3. *No Remedy Exclusive.* No right or remedy herein conferred upon or reserved to the Constructing Agency, or to the Trustee on behalf of the Constructing Agency is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing, upon the occurrence of an event of default hereunder. The failure of the Constructing Agency, or the Trustee on behalf of the Constructing Agency, to insist at any time upon the strict observance or performance by the Idaho Power Company of any of the provisions of this Falling Water Contract, or to exercise any right or remedy provided for in this Falling Water Contract, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof for the future. Receipt by the Trustee, on behalf of the Constructing Agency, of any Falling Water Payment or Supplemental Falling Water Payment required to be made hereunder with knowledge of the breach of any provisions of this Falling Water Contract, shall not be deemed a waiver of such breach. In addition to all other remedies provided in this Falling Water Contract, the Constructing Agency and the Trustee on behalf of the Constructing Agency, shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the provisions of this Falling Water Contract, or to a decree concerning performance of any of the provisions of this Falling Water Contract, or to any other remedy legally allowed to the Constructing Agency or to the Trustee on behalf of the Constructing Agency.

If any proceeding shall be brought for the enforcement of any right or remedy provided for in this Falling Water Contract in which it shall be determined that any event of default hereunder has occurred and was continuing at the time of commencement thereof, the Idaho Power Company shall pay to the Constructing Agency or to the Trustee on behalf of the Constructing Agency, all expenses incurred in connection therewith including, without limitation, reasonable attorneys' fees and expenses.

At any time the Trustee on behalf of the Constructing Agency or the holders of the Bonds, is entitled to enforce any of the rights or remedies provided for in this Falling Water Contract, it may proceed either in its own name and as Trustee of an express trust or otherwise to protect and enforce its rights and those of the Constructing Agency under this Falling Water Contract, whether or not the Constructing Agency shall have complied with any of the provisions hereof or proceeded to take any action authorized or permitted under applicable law. Such rights and remedies as are given the Constructing Agency hereunder shall also extend to the Trustee, and the Trustee and the holders of the Bonds, subject to the provisions of the Indenture, shall be entitled to the benefit of all covenants and agreements herein contained.

SECTION 11.4. *No Additional Waiver Implied by One Waiver.* Any waiver by a party of its rights with respect to an event of default under this Falling Water Contract, or with respect to any other matter arising in connection with this Falling Water Contract, shall not be deemed to be a waiver with respect to any other matter arising in connection with this Falling Water Contract. No delay in asserting or enforcing any rights hereunder shall be deemed a waiver of such rights.

ARTICLE XII

SPECIAL COVENANTS

SECTION 12.1. *Compliance with Laws, Rules and Regulations.* The Idaho Power Company and the Constructing Agency agree in the performance of their obligations hereunder to comply fully with all laws, rules and regulations pertaining to the subject matter of this Falling Water Contract including particularly the Federal Power Act, the Idaho Public Utilities Act and the rules and regulations of the Federal Power Commission and the Idaho Public Utilities Commission, and to the extent that their operations may be subject to the jurisdiction of any state or Federal regulatory agencies, subject to the terms of all valid and applicable orders of any of such agencies. This Falling Water Contract is subject to the laws of the State of Idaho and is subject to the approval of any state or Federal regulatory agency having jurisdiction thereof. The Idaho Power Company agrees to pay any and all costs and expenses of itself and the Constructing Agency in effecting compliance with any such laws, rules, regulations and orders which apply to construction, operation or maintenance of the Powerplant. Before incurring any such costs or expenses the Constructing Agency shall consult with the Idaho Power Company.

SECTION 12.2. *No Warranty of Suitability.* The Constructing Agency makes no warranty, either express or implied, as to the Replacement Dam or the Falling Water or that the Replacement Dam or the Falling Water or the design or the operation of the Replacement Dam will be suitable for Idaho Power Company's purposes or needs.

SECTION 12.3. *Rights of Access to the Constructing Agency and the United States for Construction, Operation, and Maintenance of the American Falls Replacement Dam Program.* The Constructing Agency and the Contracting Officer and their duly authorized agents, shall, without charge, have such rights of access to the Powerplant and for ingress and egress on all lands which are within the project area as defined in the License, as may be reasonably necessary to coordinate the construction of the Powerplant with the construction of the Replacement Dam, to permit the proper operation and maintenance of the Existing Dam during the construction of the Replacement Dam including the interim operation of the water control structures (as defined in the Government Contract) of the Replacement Dam at such time during construction that water control at the Existing Dam is transferred to water control at the Replacement Dam, and upon substantial completion of the Replacement Dam and Related Facilities for the proper operation and maintenance thereof by the United States.

The United States shall have the right to utilize without charge in the operation and maintenance of the Minidoka Project those lands of the United States which are within the area covered by the Idaho Power Company's License for the construction and operation and maintenance of the Powerplant, so long as such use by the United States is not inconsistent with or does not interfere with the uses intended in the License.

SECTION 12.4. *Corporate Existence of Idaho Power Company; Mergers and Consolidation.* The Idaho Power Company agrees that during the Original Term of this Falling Water Contract it will maintain its corporate existence, will continue to be a corporation either organized under the laws of or duly qualified to do business as a foreign corporation in the State of Idaho, and will not dispose of all or substantially all of its assets nor consolidate with nor merge into another corporation unless the acquirer of its assets or the corporation with which it shall consolidate or into which it shall merge shall be a corporation organized and existing under the laws of one of the States of the United States of America and shall be qualified and admitted to do business in the State of Idaho, shall be or as a result of the

transaction shall become a public utility, shall have a net worth immediately subsequent to such acquisition, consolidation or merger at least equal to that of the Idaho Power Company immediately prior to such acquisition, consolidation or merger, and shall assume in writing all of the obligations of the Idaho Power Company herein.

SECTION 12.5. *Approvals.* Whenever under the provisions of this Falling Water Contract the approval of the Idaho Power Company is required or the Constructing Agency is required to take some action at the request of the Idaho Power Company, such approval or such request shall be made by the Authorized Idaho Power Company Representative unless otherwise specified in this Falling Water Contract and the Constructing Agency or the Trustee shall be authorized to act on any such approval or request and the Idaho Power Company shall have no complaint against the Constructing Agency or the Trustee as the result of taking any such action.

SECTION 12.6. *Financial Reports of Idaho Power Company and Constructing Agency.* The Idaho Power Company agrees to furnish to the Constructing Agency and to the Trustee a copy of each of the financial statements certified by a certified public accountant that it customarily furnishes to its stockholders. The Constructing Agency agrees annually to furnish to the Idaho Power Company, the Trustee, the Contracting Officer and each of the Stockholders, a copy of a report of an independent certified public accountant, or state auditing official, if appropriate, reflecting in reasonable detail the status of each fund or account created under the terms of the Indenture, including the amount and source of the deposits therein, the amount and purpose of withdrawals, and the balance therein at the beginning and end of each fiscal year, as defined in the Indenture.

SECTION 12.7. *Non-Arbitrage Certifications and Representations.* The Constructing Agency and the Idaho Power Company covenant and represent to each other that:

1. On the basis of their own knowledge, and on examination of the reports and cost projections in connection with the construction of the American Falls Replacement Dam Program:

(a) All of the principal proceeds of the Series 1976 Bonds are needed for the purpose of paying the Cost of Construction of the American Falls Replacement Dam Program, including expenses preliminary and incidental thereto and to the issuance of the Series 1976 Bonds.

(b) At least 85% of the expendable proceeds of the Series 1976 Bonds, including investment proceeds, will be expended for the Cost of Construction of the American Falls Replacement Dam Program on or before three years following the date of issue of the Series 1976 Bonds.

(c) The Constructing Agency, prior to the issuance of the Series 1976 Bonds, will have incurred substantial binding obligations equal to at least 2½% of the total Cost of Construction of the American Falls Replacement Dam Program.

(d) Work on the construction of the American Falls Replacement Dam Program is expected to proceed with due diligence to completion.

(e) Except as required pursuant to the provisions of the Act of December 28, 1973, the American Falls Replacement Dam Program is not expected to be sold or otherwise disposed of, in whole or in part, prior to the maturity of the Series 1976 Bonds.

(f) Accrued interest received upon the sale of the Series 1976 Bonds is to be applied to the first interest due thereon.

2. On the basis of the foregoing certifications and representations, it is not expected by either the Constructing Agency or the Idaho Power Company that the proceeds of the Series 1976 Bonds will be used in a manner that would cause the Series 1976 Bonds to be classified as an "arbitrage bond" under Section 103(d) of the Internal Revenue Code of 1954, as amended, and the regulations

promulgated under that section; that to the best knowledge and belief of the Constructing Agency and the Idaho Power Company, there are no facts or circumstances that would materially change the foregoing conclusion.

SECTION 12.8. *Non-Arbitrage Covenants.* The Constructing Agency and the Idaho Power Company jointly and severally covenant that so long as any of the Series 1976 Bonds shall remain outstanding and any provision in this Falling Water Contract or the Indenture to the contrary notwithstanding with respect to an investment of moneys, whether such moneys were derived from the proceeds of the Series 1976 Bonds, or from any other source, no use will be made of such moneys which, if such use could have been reasonably expected on the date of the issue of the Series 1976 Bonds, would have caused the Series 1976 Bonds to be classified as an "arbitrage bond" within the meaning of Section 103(d) of the Internal Revenue Code of 1943, as amended, and further jointly and severally covenant to comply with the requirements of said Section 103(d) and any regulations promulgated thereunder.

ARTICLE XIII

ASSIGNMENT

SECTION 13.1. *Conditions on Assignments by Idaho Power Company.* This Falling Water Contract may be assigned in whole or in part, and the use of the Falling Water may be assigned as a whole or in part, by the Idaho Power Company without the necessity of obtaining the consent of either the Constructing Agency or the Trustee, but only upon obtaining the consent of the Secretary, subject, however, to each of the following conditions:

(a) No assignment (other than pursuant to Section 12.4 hereof) shall relieve the Idaho Power Company from primary liability for any of its obligations hereunder, and in the event of any such assignment the Idaho Power Company shall continue to remain primarily liable for payment of the Falling Water Payments and the Supplemental Falling Water Payments, and for the performance and observance of the other covenants, representations, warranties and agreements on its part herein provided to be performed and observed by it to the same extent as though no assignment has been made.

(b) The assignee of the Idaho Power Company shall expressly assume in writing the obligations of the Idaho Power Company hereunder to the extent of the interest assigned.

(c) The Idaho Power Company shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Constructing Agency, the Secretary and the Trustee a true and complete copy of each such assignment or assumption or obligation as the case may be.

SECTION 13.2. *Assignments or Dissolution by Constructing Agency.* The Constructing Agency may assign its interest in, and pledge any moneys receivable under this Falling Water Contract, to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds, and applicable premium, if any, but each such assignment or pledge shall be subject and subordinate to the rights of the Idaho Power Company under this Falling Water Contract. The Constructing Agency, to the extent it may legally so covenant, covenants and agrees with Idaho Power Company that it will not dissolve or otherwise abandon its existence so long as this Falling Water Contract is in existence without the written consent of the Contracting Officer and the Idaho Power Company, and so long as any of the Bonds are outstanding, without the written consent of the Trustee.

ARTICLE XIV

GENERAL

SECTION 14.1. *Original Term; Liability of Constructing Agency.* This Falling Water Contract shall become effective upon its execution by the Constructing Agency and the Idaho Power Company and its approval by the Contracting Officer and, unless extended as hereinafter provided in Section 14.2

hereof, or unless this Falling Water Contract shall have been terminated in accordance with the provisions of Section 4.10 hereof, the Original Term of this Contract shall terminate on March 31, 2025, being fifty (50) years from the date of the License. The Idaho Power Company irrevocably waives, to the extent that it lawfully may, any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance, any suit in equity, action at law, or other legal or equitable proceeding brought against it for specific performance of the obligation of Idaho Power Company to make the Falling Water Payments and the Supplemental Falling Water Payments of this Falling Water Contract by the Constructing Agency, any receiver or the Trustee, as well as any defense to any other such proceeding which might be brought against the Idaho Power Company to enforce any of the rights or remedies provided for in this Falling Water Contract based on the fact that, at the time any payment hereunder is requested, the Constructing Agency is or may be insolvent. The Idaho Power Company's remedy for any act or omission by the Constructing Agency shall be limited to an action or actions for specific performance of this Falling Water Contract by the Constructing Agency; provided, however, as long as any Bonds are outstanding no such action shall be taken which will reduce the amount of the Installments of the Falling Water Payments or the amount of the Supplemental Falling Water Payments needed to pay principal of, premium, if any, or interest on the Bonds or will interfere with the right of the Trustee to receive and apply such Falling Water Payments and Supplemental Falling Water Payments. It is recognized by the Constructing Agency and the Idaho Power Company that the end of the term of this Falling Water Contract shall not preclude the other from seeking damages for any cause of action which shall have arisen prior to the end of the term of this Falling Water Contract.

SECTION 14.2. *Renewal Term.* If, after expiration of the Original Term of the License of the Idaho Power Company for the construction, operation, and maintenance of the Powerplant, such License is continued or renewed this Falling Water Contract shall thereupon be continued in effect during such period of continuation or the Renewal Term; provided, however, that the Constructing Agency and the Idaho Power Company may mutually consent to such annual payments to be made by Idaho Power Company to the Constructing Agency on behalf of the Spaceholders as shall be agreed to at that time.

SECTION 14.3. *Execution of Documents.* The Constructing Agency and the Idaho Power Company, upon request by the other, shall make, execute and deliver any and all documents reasonably required to implement the terms of this Falling Water Contract.

SECTION 14.4. *Supplements and Amendments.* Prior to the sale of the Series 1976 Bonds this Falling Water Contract may be supplemented or amended with the consent of the Secretary, for the purpose of complying with any directive, order or license requirement of the Federal Power Commission or of any other regulatory agency having jurisdiction over the parties and the Powerplant, or of any order, judgment or decree of any court of competent jurisdiction, either state or Federal, provided that no such supplement or amendment shall reduce the obligation of the Idaho Power Company to pay the Falling Water Payments or the Supplemental Falling Water Payments.

Subsequent to the sale of the Series 1976 Bonds, and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Falling Water Contract may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee and of the Secretary.

SECTION 14.5. *Spaceholders Third Party Beneficiaries.* The parties hereto recognize that the Spaceholders on whose behalf Spaceholder Contracts have been executed with the Constructing Agency in accordance with Section 3 of the Act of December 28, 1973, are in fact third party beneficiaries of the obligations of Idaho Power Company to make the Falling Water Payments and the Supplemental Falling Water Payments pursuant to this Falling Water Contract. The rights of Spaceholders shall be governed by the provisions of the Spaceholder Contracts entered among the Spaceholders, the Contracting Officer, and the Constructing Agency. The monetary return to the Constructing Agency as a result of this Falling Water Contract, shall be utilized to defray the Cost of Construction of the American Falls Replacement Dam Program as hereinabove agreed for the proportionate benefit of all Spaceholders on whose behalf

contracts are executed for the repayment of their proportionate share of the Cost of Construction of the American Falls Replacement Dam Program.

SECTION 14.6. *Notices; Manner of Giving; Duplicate Copies to United States and Trustee.* Any notice, demand, or request provided for in this Falling Water Contract, or given or made in connection with this Falling Water Contract to or upon the Constructing Agency, shall be deemed to be properly given or made if delivered or sent by registered mail to 1132 Locust Street, Twin Falls, Idaho 83301. Any notice, demand, or request provided for in this Falling Water Contract to or upon the Idaho Power Company shall be deemed to be properly given or made if delivered or sent by registered mail to 1220 Idaho Street, Boise, Idaho 83701. Any notice, demand, or request provided for in this Falling Water Contract, or given or made in connection with this Falling Water Contract to or upon the United States, shall be deemed to be properly given or made if delivered or sent by registered mail to Regional Director, Pacific Northwest Region, Bureau of Reclamation, Box 043, 550 West Fort Street, Boise, Idaho 83724.

Any notice, demand or request provided for in this Falling Water Contract or given in connection with this Falling Water Contract to or upon the Trustee shall be deemed to be properly given or made if delivered or sent by registered mail to the corporate trust office of the Trustee.

Any notice, demand or request provided for in this Falling Water Contract or given in connection with this Falling Water Contract to or upon the Spaceholders shall be deemed to be properly given or made if delivered or sent by registered mail to the Authorized Spaceholder Representative.

A duplicate copy or copies of each notice given hereunder by either the Constructing Agency or the Idaho Power Company to the other shall also be given to the United States and the Trustee. A duplicate copy of each notice given by either Constructing Agency or Idaho Power Company to either the Trustee or the United States shall also be given to the other party hereto.

The designation or the address of any person specified in this Section may be changed at any time by written notice to the other persons whose addresses are set forth in this Section.

SECTION 14.7. *Benefit of Falling Water Contract.* This Falling Water Contract shall inure to the benefit of and shall be binding upon the Constructing Agency, the Idaho Power Company, and their respective successors and assigns, subject, however, to the limitations contained in Sections 12.4, 13.1 and 13.2 hereof.

SECTION 14.8. *Severability.* In the event any provision of this Falling Water Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 14.9. *Amounts in Bond Fund.* Any amounts remaining in the Bond Fund upon expiration or sooner termination of the Original Term as provided in this Falling Water Contract, after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture) and the fees, charges and expenses of the Trustee and paying agents in accordance with the Indenture and all other amounts required to be paid under this Falling Water Contract and the Indenture, shall be paid by the Trustee to the Constructing Agency for disposition in accordance with the provisions of the Spaceholder Contracts and to Idaho Power Company in the proportion that the respective obligations of the Spaceholders and of Idaho Power Company to pay the principal of the Bonds as determined under Sections 9.7, 9.10 and 9.11 hereof bears to the total principal amount of the Bonds.

SECTION 14.10. *Execution in Counterparts.* This Falling Water Contract may be executed in several counterparts, each of which shall be an original, and all such shall constitute and be one and the same instrument.

SECTION 14.11. *Choice of Law.* This Falling Water Contract shall be construed and governed exclusively by the applicable laws of the State of Idaho.

SECTION 14.12. *Waiver of Subrogation Rights.* No payment of any kind to the Trustee or the holders of the Bonds by the Idaho Power Company pursuant to the provisions hereof, including without limitation Section 11.2 hereof, shall entitle the Idaho Power Company, by subrogation to the rights of the holders of the Bonds in respect of which such payment is made or otherwise, to any payment by the Constructing Agency or to any payment required to be made by a Spaceholder pursuant to a Spaceholder Contract or out of the property of Constructing Agency in enforcement of the Indenture or otherwise, except after payment in full of the entire principal of and premium, if any, and interest on the Bonds and any and all indebtedness evidenced by the Bonds or the Indenture, or provision for such payment satisfactory to the Trustee.

IN WITNESS WHEREOF, the Constructing Agency and the Idaho Power Company have caused this Falling Water Contract to be executed in their respective names and their respective seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

AMERICAN FALLS RESERVOIR DISTRICT

By: /s/ JOHN M. BARKER
President

(SEAL)

Attest:

/s/ DIANNE BRIDGUM
Secretary

IDAHO POWER COMPANY

By: /s/ JAMES E. BRUCE
President

(SEAL)

Attest:

/s/ PAUL L. JAUREGUI
Secretary

APPROVED this 31st day of March, 1976

UNITED STATES SECRETARY OF THE INTERIOR

By: /s/ RODNEY J. VISSIA
Regional Director

Pacific Northwest Region
Bureau of Reclamation
Box 043—550 West Fort Street
Boise, Idaho 83724

STATE OF IDAHO }
COUNTY OF ADA } ss.

On this 24th day of March, in the year 1976, before me, John A. Rosholt, a Notary Public, personally appeared John M. Barker and Dianne Bridegum, known to me to be, respectively, the President and the Secretary of the American Falls Reservoir District that executed the said instrument, and acknowledged to me that the American Falls Reservoir District executed the same.

IN WITNESS WHEREOF, I set my hand and affix my official seal the day and year first above written.

/s/ JOHN A. ROSHOLT
Notary Public in and for the State of Idaho
Residing at: Twin Falls, Idaho
My commission expires: 1979
(SEAL)

STATE OF IDAHO }
COUNTY OF ADA } ss.

On this 24th day of March, in the year 1976, before me, Mary L. Morton, a Notary Public, personally appeared James E. Bruce and Paul L. Jauregui, known to me to be the President and Secretary of the corporation that executed the said instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I set my hand and affix my official seal the day and year first above written.

/s/ MARY L. MORTON
Notary Public in and for the State of Idaho
Residing at: Boise, Idaho
My commission expires: 4-1-76
(SEAL)

SPACEHOL FALLS RESERVOIR

HOLDINGS OF SPACE IN AMER.

Water User	Contract No.	Date	Date of Supplemental Contract	Approximate Acre-Feet	Percent of Active Capacity to Distribute Construction Costs	Percent to Distribute Annual Dam Operation and Maintenance Costs	Percent to Distribute Annual Dam Operation and Maintenance Costs
UPPER VALLEY ORGANIZATIONS							
Aberdeen-Springfield Canal Company(1)	14-06-W-24	10-22-52	9-26-63	32,572	1.9160	1.8276	1.9680
Andrus, Ray	14-06-100-7771	5-16-73	None	191	0.0112	.0107	.0115
The Blackfoot Irrigating Company	14-06-W-39	12-12-52	2-6-63	12,763	0.7508	.7161	.7712
The Butte and Markat Lake Canal Company	14-06-W-38	12-12-52	2-6-63	4,666	0.2745	.2618	.2819
Clement Brothers, a partnership	14-05-100-7446	9-9-72	None	71	0.0042	.0040	.0043
Corbet Slough Ditch Company	14-06-W-12	12-12-52	2-6-63	3,396	0.1998	.1905	.2052
The Enterprise Canal Company, Ltd.	14-06-W-15	12-12-52	2-1-63	8,923	0.5249	.5007	.5392
Enterprise Irrigation District	14-06-100-1912	6-2-60	None	10,188	0.5993	.5716	.6156
Harrison Canal and Irrigation Company	14-06-W-30	12-12-52	2-1-63	12,025	0.7074	.6747	.7266
Michaud Division, Fort Hall Indian Reservation	Memorandum of Agreement	4-25-57	None	47,700	2.8059	2.6764	2.8822
NEW SWEDEN IRRIGATION DISTRICT							
New Sweden Irrigation District	14-06-W-14	12-12-52	2-1-63	25,731	1.5136	1.4438	1.5547
Poplar Irrigation District	14-06-W-45	12-18-52	2-1-63	673	0.0396	.0378	.0407
Progressive Irrigation District	14-06-W-47	12-18-52	1-31-63	12,485	0.7344	.7005	.7544
Rudy Canal Company, Limited	14-05-W-37	12-12-52	2-1-63	2,649	0.1558	.1486	.1601
Snake River Valley Irrigation District	14-06-W-35	12-12-52	2-1-63	26,567	1.5510	1.4795	1.5932
The Trego Ditch Company	14-06-W-23	12-12-52	2-6-63	1,314	0.0773	.0737	.0794
LOWER VALLEY ORGANIZATIONS							
American Falls Reservoir District(2)	14-06-W-59	5-13-54	3-14-60	460,170	27.0688	25.8199	27.8048
American Falls Reservoir District No. 2	14-06-W-73	10-14-54	2-2-60	400,000	23.5294	22.4438	24.1692
Hillsdale Irrigation District	14-06-W-23	7-22-23	None	41,146	2.4203	2.3087	2.4862
MILNER LOW LIFT IRRIGATION DISTRICT							
Milner Low Lift Irrigation District	14-06-W-92	1-7-55	1-21-66	45,687	2.6875	2.5635	2.7605
North Side Canal Company, Limited(1)	14-06-W-28	12-12-52	2-29-60	118,380	6.9635	6.6422	7.1529
A & B Irrigation District	14-06-100-2368	2-9-62	None	47,593	2.7996	2.6704	2.8757
Idaho Power Company	14-06-100-2368	6-15-23	None	45,000	2.6471	2.5635	2.7605
UPPER VALLEY ORGANIZATIONS							
Aberdeen-Springfield Canal Co.			1.3541				
Martin Canal Co.			0.0839				
Woodville Canal Co.			0.3356				
LOWER VALLEY ORGANIZATIONS							
North Side Canal Co., Ltd.			16.4020				
Twin Falls Canal Co.			8.8932				
			27.0688*				

(1) Also has space through American Falls Reservoir District.

(2) American Falls Reservoir District holds this space for the following:

UPPER VALLEY ORGANIZATIONS	Percent of Capacity	Approximate Acre-Feet
Aberdeen-Springfield Canal Co.	1.3541	23,019
Martin Canal Co.	0.0839	1,426
Woodville Canal Co.	0.3356	5,706
LOWER VALLEY ORGANIZATIONS		
North Side Canal Co., Ltd.	16.4020	278,834
Twin Falls Canal Co.	8.8932	151,185
	27.0688*	460,170

* Erroneously typed as 27.0687 in supplemental contract of 3-14-60.

(3) Computed on the basis of article 17 of the contract of 6-15-23.

NON-PARTICIPATING WATERUSERS
HOLDINGS OF SPACE IN AMERICAN FALLS RESERVOIR

<u>Water User</u>	<u>Contract No.</u>	<u>Date</u>	<u>Date of Supplemental Contract</u>	<u>Approximate Acre-Feet</u>	<u>Percent of Active Capacity Distributed to Construction Costs</u>	<u>Percent to Distribute Annual Replacement Operation and Maintenance Costs</u>	<u>Percent to Distribute Annual Water Quality Operation and Maintenance Costs</u>
UPPER VALLEY ORGANIZATIONS							
Burgess Canal and Irrigating Company...	14-06-W-41	12-18-52	2-1-63	9,496	0.5586	.5328	.5738
Dilts Irrigation Company, Limited	14-06-W-32	12-12-52	2-6-63	886	0.0521	.0497	.0535
Falls Irrigation District	14-06-100-851	12-9-55	9-15-64	23,300	1.3706	1.3074	1.4079
Idaho Irrigation District	14-06-W-33	12-12-52	2-6-63	22,911	1.3477	1.2855	1.3844
The Lenroot Canal Company	14-06-W-22	12-12-52	2-1-63	3,868	0.2275	.2170	.2337
The Martin Canal Company(1)	14-06-W-36	12-12-52	9-10-73	580	0.0341	.0326	.0350
Peoples Canal & Irrigation Company ...	14-06-W-44	12-18-52	1-31-63	21,415	1.2597	1.2016	1.2940
Reid Canal Company	14-06-W-10	12-12-52	2-6-63	2,549	0.1499	.1430	.1540
Utah-Idaho Sugar Company	11r-538	6-6-25	(2)	13,459	0.7917	.7552	.8132
(Osgood tract)							
The Woodville Canal Company(1)	14-06-W-49	12-18-52	9-10-73	341	0.0200	.0191	.0206
LOWER VALLEY ORGANIZATIONS							
Burley Irrigation District	14-06-W-48	12-18-52	1-25-60	157,942	9.2907	8.8621	9.5433
Minidoka Irrigation District	14-06-100-1833	2-2-60	None	83,563	4.9155	4.6887	5.0491

(1) Also has space through American Falls Reservoir District.

(2) Has contract for 15,852 acre-feet—is entitled to an additional 5,378 acre-feet of which total 7,771 is transferred to Jackson. Contract to accomplish this is in progress.

EXHIBIT H