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DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA	)	Subcase: See Attachment A
	)	
Case No. 39576	)	AFFIDAVIT OF DAVID A. JARVIS
_____	)	

STATE OF COLORADO	)
	)ss.
City and County of Denver	)

AFFIDAVIT

I, DAVID A. JARVIS, being of lawful age and having been first duly sworn, state
the following:

1. I make the following statements based upon personal knowledge and am
competent to testify thereto.

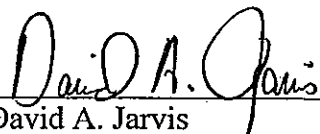
2. I am a paralegal with Labat-Anderson, Inc., a government contractor which provides paralegal services to the U.S. Department of Justice.

3. I provide paralegal support to Environment and Natural Resources Division attorneys who represent the interests for the United States in the Snake River Basin Adjudication. I have performed this role for approximately nine (9) years. As part of my duties, I act as the custodian of SRBA files for the United States Department of Justice, and am familiar with the court filings served upon the United States and the documents filed by the United States in the SRBA.

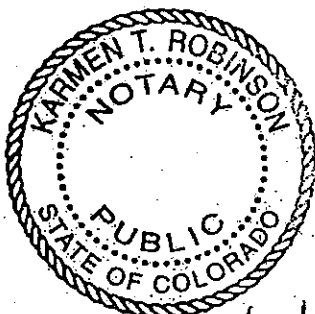
4. I attest that attached as Exhibit A is a true and correct copy of U.S. Bureau of Reclamation, STATUS REPORT-WORKINGS OF PALISADES WATER SAVINGS AGREEMENT (1968).

5. I attest that attached as Exhibit B is a true and correct copy of Contract Between the United States of America and Aberdeen-Springfield Canal Company dated October 22, 1952.

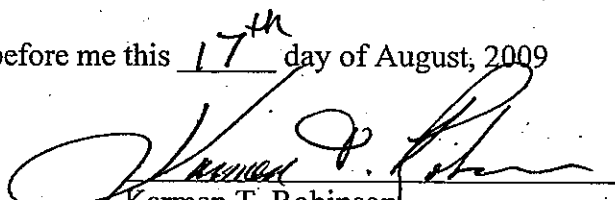
DATED this 17th day of August, 2009.


David A. Jarvis

SUBSCRIBED AND SWORN to before me this 17th day of August, 2009



My Commission Expires 3/25/2013


Karmen T. Robinson
Notary Public for Colorado
Residing at: Denver, CO.
My Commission Expires:

Attachment A

Subcase Nos.

Minidoka Power Rights

01-00217

01-00218

01-04024

01-04025

Palisades Storage Power Right

01-02068

Palisades Natural Flow Power Right

01-04054

Exhibit A

STATUS REPORT

WORKINGS OF PALISADES WATER SAVINGS AGREEMENT

p. 8 Summary

U. S. Bureau of Reclamation

Boise, Idaho
August 5, 1968

STATUS REPORT
WORKINGS OF PALISADES WATER SAVINGS AGREEMENTS

This is a status report on important gains in the efficiency of total water use in the entire Upper Snake River Basin through the workings of Palisades water savings and exchange agreements that were entered into by some 57 water user entities as a part of the Palisades Dam Project-authorization package.

The report also brings out (1) the complex nature of surface-ground water relationships existing in the entire Upper Basin, and (2) the necessity for evaluating individual project hydrologic operations as part of an integrated whole. The characteristics of the Upper Snake River hydrologic regimen are unique in Idaho, as well as the Northwest, and without consideration of the above-listed factors, certain indicated diversions for the purpose of manipulating ground water levels may appear to be excessive when related to irrigation diversion in the traditional manner.

The Palisades Project was initially authorized in 1941 as the Palisades Dam Project by the presentation to the President and the Congress of a report and findings of feasibility by the Secretary of the Interior on December 9, 1941 (H. Doc. No. 457, 77th Congress, 1st Session), under the provisions of section 9 of the Reclamation Project Act of 1939 (53, Stat. 1187). That finding incorporated the report of the Commissioner of Reclamation to the Secretary of the Interior, dated November 1, 1941. The supporting engineering and economic report of the Bureau of Reclamation was the product of investigations begun by the Bureau in 1932 to study means of providing urgently needed supplemental storage in the Upper Snake River Valley.

The report of the Commissioner of Reclamation to the Secretary of the Interior, noted above, stated that the success of the Palisades Reservoir would depend on the conservation of 135,000 acre-feet of water annually then being lost to the reservoir system because of winter diversions for stock and domestic purposes. The Bureau of the Budget, speaking for the President, approved the project with the reservation that submission of estimates of appropriations needed for construction be withheld until local interests had given satisfactory assurance to the Secretary of the Interior that winter diversions in certain areas above American Falls Dam would be eliminated.

A thorough investigation of water uses and requirements in the Upper Snake River Valley was made by the Bureau of Reclamation during the 1940's subsequent to the time the project was first authorized. The primary purpose of this investigation was to provide factual information to serve as a basis for the negotiation of agreements with water users of the Valley covering the elimination of water loss caused principally by winter operation of canals. An associated objective was to gather factual material from which to determine a proper distribution of the 433,593 acre-feet of reserved space in American Falls Reservoir. When the American Falls Reservoir, 120 miles downstream from Palisades, on the main stem of the Snake, was completed in 1927, the contemplated use of that space was for new land developments. For a number of years shortly following completion of American Falls Dam, the reservoir failed to fill because of an unprecedented drought. The reserved space was, therefore, leased to existing water users.

A report covering the results of the above investigation, entitled "Water Supply for Palisades Reservoir Project, Idaho" (Project Planning Report No. 1-5.17-1), was issued by the Bureau of Reclamation in October 1946. The report presented the results of extensive water supply studies of the Upper Snake River Valley, together with a proposed winter water-saving program and a plan for development of new land. After the issuance of this report, the Bureau of Reclamation carried on lengthy negotiations with the water users in an effort to obtain the maximum possible conservation of water and also to obtain agreement as to an equitable distribution of the reserved space in American Falls Reservoir.

The practice of diverting water into the canals in winter for stock and domestic purposes, established many years ago, was deep rooted and difficult to alter. Various proposals were made by the United States, out of which a compromise evolved. The compromise involved these principal points: (1) the elimination by the water users at their own expense of winter diversions in order to conserve water for storage in Palisades and American Falls Reservoirs; (2) the curtailment of the use of water for power generation at Minidoka Dam for the financial account of the Minidoka Project to conserve additional water for storage in American Falls, Island Park, and Palisades Reservoirs; (3) the coordinated operation of the reservoir system for maximum storage water yields; (4) the establishment of uniform storage holdover privileges in all reservoirs; (5) a permanent exchange of contract storage rights between American Falls and Jackson Lake Reservoirs to reduce storage delivery losses; (6) the distribution of American Falls Reservoir space as follows: 315,000 acre-feet to existing lessees, 47,593 acre-feet to the North Side Pumping Division of the

Minidoka Project, and 71,000 acre-feet to the Michaud area; (7) the recognition of existing rights to the diversions made during periods of flood flow; (8) the commitment of Palisades users to allow that reservoir to be pooled with the next 300,000 acre-feet of storage added to the system; and (9) the clarification of storage and diversion rights in connection with American Falls Reservoir.

The winter water-saving program involves the elimination of the long-standing practice of supplying domestic and stock water to farmsteads by operating irrigation canal systems throughout the year. A substantial portion of the water diverted into the canals during the winter percolates to the underlying groundwater reservoir which is not tributary to the Snake River above Milner Dam. Hence, the elimination of winter seepage losses from the canals in such nontributary areas increases the amount of water available for storage. State of Idaho water rights to divert water in winter for stock and domestic purposes were clearly established by actual use over many years. Reliance on the canals for domestic and stock water was continued for many years because of the high cost of drilling deep wells and pumping water from them and because it is more convenient to water livestock from canals than from wells. Furthermore, there was no real incentive to save water until Palisades Reservoir was constructed on the Snake River because the water would otherwise spill past Milner Dam. Since the water users involved in the winter water-saving program incurred considerable expense in equipping their farmsteads with wells and lost the convenience of watering livestock from canals, it was understood among all prospective participants that those water users who make possible the saving would be entitled to a special right to store the saved water to the extent required to fill their share of the storage capacity in American Falls and Palisades Reservoirs.

By coordinating the operation of all reservoirs in the system, the maximum volume of storage water can be carried over in the reservoir system from wet cycles to dry cycles. The amount of that carryover is substantially greater than would be the case if Palisades were operated independently from the existing system. Through this coordination, Jackson Lake can be operated primarily as a holdover reservoir, and only limited irrigation water is drawn from it until Palisades Reservoir has been emptied. The additional, usable return flow made available from application of this holdover storage will augment further the supply of irrigation water during drought periods. Operation studies of the reservoir system, taking account of these factors, show that storage in Palisades Reservoir and the elimination of winter diversions and curtailment of power at Minidoka Dam would have made enough additional water available to eliminate all shortages on existing projects during the past 79 years, except those in the extremely

dry years of 1934 and 1935. Even in those years, however, an appreciable reduction would have been made in the shortages.

Resolutions giving assurance that the water users would agree to water saving provisions which would satisfy the conditions of the authorizing document for Palisades Dam were obtained in 1949 from the governing bodies of the interested water user groups. On the basis of these resolutions some preliminary construction contracts were executed late in fiscal year 1949. In the early 1950's, these resolutions were confirmed by formal contracts with the water users. Over 50 contracts, generally referred to as the "Palisades Contracts," were negotiated over a period of several years. In addition to the annual water saving of 135,000 acre-feet, established as a prerequisite to the beginning of construction of Palisades Dam, these contracts provide a basis for possible maximum annual savings of 276,000 acre-feet by curtailment of winter diversions by canals diverting at Milner Dam.

Under the contracts each of 41 irrigation districts and companies agreed to eliminate winter diversions for a period of 150 consecutive days during the November 1 through April 30 period each year. The estimated average annual saving from such curtailment is 143,000 acre-feet, of which 135,000 acre-feet is attributable to curtailment by canals above American Falls Dam and 8,000 acre-feet by those diverting below that point. Under the contracts, such curtailment was to begin with the 1958-1959 storage season. Partial curtailment of winter diversions actually began 4 or 5 years prior to this time and increased gradually throughout this period. The full annual saving of 143,000 acre-feet has been accomplished each storage season, beginning with the 1958-1959 storage season.

In addition to the mandatory annual savings of 143,000 acre-feet above, the contracts provide a basis for an additional savings by curtailment of winter diversions by the North and South Side Twin Falls canals diverting at Milner Dam. The possible maximum annual savings is estimated to be 276,000 acre-feet. Although this water saving is exercised only at the option of the two companies, winter diversions have been substantially reduced each winter, beginning with the winter of 1960-61. It appears that the companies' decision to exercise this option during the 1960-61 storage season was prompted by the low storage levels in the reservoir system at the end of the 1960 irrigation season. This decision was indeed timely in view of the fact that streamflow in 1961 was much below normal, the reservoir system failed of filling by a substantial amount, and a number of areas experienced irrigation water shortages. Without Palisades Reservoir and winter water saving actually accomplished, the shortages would have

been much more severe. Had the curtailment of winter diversions at Milner Dam been started in 1959 the water shortages in 1961 would probably have been eliminated.

Winter diversions at Milner Dam have been substantially reduced each winter since 1961. The amount of the reduction varies from year to year, ranging from a maximum of 260,000 acre-feet in the winter of 1961-62 to a minimum of 198,000 acre-feet in the winter of 1965-66. In addition to the obvious benefits from saving water for storage in the reservoirs the maintenance of the canal system is more effective and less costly when the canals are shut off in winter. For this reason, it is expected that such savings will be increased in future years and eventually the maximum annual savings of 276,000 acre-feet will probably be realized with the canals shut off from November 1 to April 1 in all years.

Under the Palisades contracts the water saved by curtailment of winter diversions is first credited to the company or district making the saving until the reservoir space owned by the particular district or company is filled. When this occurs the saved water accrues to the remaining unfilled space in the reservoir system. Thus, the water saving program provides benefits to the entire irrigated area which has interests in the reservoir system.

The Palisades contracts have a third water saving feature. These contracts provide for limiting the use of water for power generation at American Falls and Minidoka Dams below the amounts that would accrue to rights for power production at these two dams. Such curtailment in the exercise of power rights at Minidoka Dam will result in a loss of generation of units 1 to 6 of that powerplant but will result in saving of water for storage for irrigation use. The water so saved is credited to American Falls, Island Park, and Palisades Reservoirs. In compensation for such losses in power generation, replacement power is provided to the Minidoka Power system, and, based on a moving average of the net annual amount of replacement power and energy required, the costs thereof are charged to the beneficiaries of the resultant water saving and the financial benefit is credited to the water users of the Minidoka Project. This provision for sharing the cost by water users actually benefited provided an equitable solution to a long-standing controversy.

The extent of water savings from curtailment of power rights varies from year to year. The saving is fully effective only during prolonged cycles of low streamflow when the available streamflow is insufficient to fill the reservoirs and the water can be stored and used. In a number of years there is enough streamflow to fill the reservoirs without any water saving.

During a prolonged cycle of low runoff such as occurred 1930-35, it is estimated that the effective saving from curtailment of power rights would be 2,700,000 acre-feet or an average of 450,000 acre-feet annually.

The water saving from curtailment of power rights actually overlaps the water savings from curtailment of winter diversions at Milner Dam to the extent that power releases can be used to satisfy diversion requirements at Milner Dam. Out of the estimated average annual saving of 450,000 acre-feet from curtailment of power rights during low runoff cycles up to a maximum of 276,000 acre-feet may be creditable to curtailment of winter diversions at Milner Dam. Thus, the net annual increase in storable water from curtailment of power rights is 174,000 acre-feet.

The Palisades contracts provide for maximum annual water savings during prolonged cycles of low streamflow as follows:

	<u>Acre-feet</u>
Elimination of winter diversions above American Falls Dam and at Minidoka Dam	143,000
Curtailment of winter diversions at Milner Dam	276,000
Curtailment of power rights at Minidoka Dam	<u>174,000</u>
Total annual savings	593,000

Thus, the potential savings for a six-year drought period such as occurred 1930-35 would be in excess of 3.5 million acre-feet.

It was recognized in the negotiations that led to the water savings and exchange arrangements necessary for the construction of Palisades Reservoir that these arrangements would require adjustments in the court decrees that govern the distribution of water in the Upper Snake River Valley, Water District 36. All the water users agreed to the arrangements on the basis that this would be accomplished and that all the compromises agreed to in the negotiations would be included in the resulting court decree.

Records of irrigation diversions in the Henrys Fork Valley indicate annual diversion rates in excess of 10 acre-feet per acre in many areas. To those not understanding Upper Snake River surface water-ground water relationships, these high diversion rates may appear unreasonable and imply poor management and inefficient application of water. It should be recognized that present practices evolved from past failures in attempting

to irrigate the area by conventional means and that so far subirrigation is the only method fully demonstrated to be practical in this area. If reuse of return flow and the use of groundwater in the nearby Mud Lake area is considered the overall diversion rate compares favorably with those elsewhere on the Snake River.

The present heavy use of water in the Henrys Fork Valley results from subirrigation of about 70,000 acres of land in that area. An additional 40,000 acres is irrigated by conventional surface irrigation. The practice of subirrigation was established during the early stages of development, after irrigation by customary surface methods proved a failure. A wide variety of crops is grown by maintaining the water table within reach of the plant roots during the summer instead of by spreading water on the surface of the ground in the usual manner. The hydraulic properties of the underground reservoir permit the raising and lowering of the water table by varying the flow of water in the canals. The canals must be operated at partial capacity during winter to hold the water table at a level from which it can be raised to the plant roots in the spring after the ice and snow in the canals have melted. Present schedules of annual diversion to the subirrigated lands have been evolved through the experience of over 60 years in manipulating the water table to give maximum crop production during the relatively short growing season in that area.

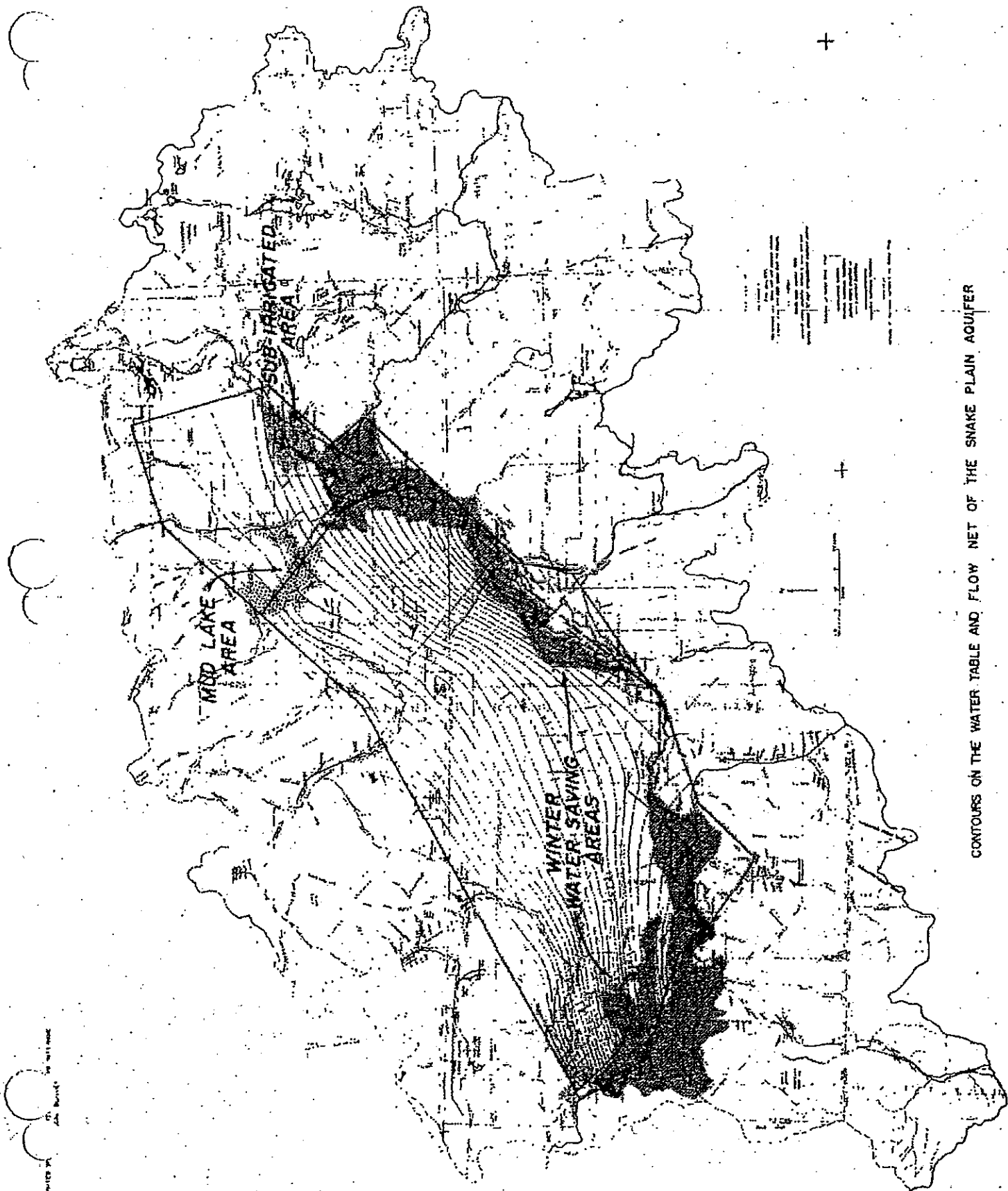
Hydrographic studies have shown that relatively large quantities of groundwater move westward toward Mud Lake as a result of maintaining high water tables in the Henrys Fork Valley. This is well illustrated by the attached chart, "Contours on the Water Table and Flow Net of the Snake Plain Aquifer." This groundwater movement has caused a phenomenal increase in the inflow to Mud Lake since 1900 and is the major source of supply for approximately 75,000 acres now irrigated in that area. If in addition to the approximately 110,000 acres actually irrigated in the Henrys Fork Valley credit is also given for the 75,000 acres irrigated in the Mud Lake area and for reuse of return flow in the Henrys Fork Valley, the overall diversion efficiency is comparable to that elsewhere on Snake River. For example, the total diversion from Fall River, Henrys Fork River, and Lower Teton River during 1967 was 1,017,000 acre-feet. The irrigation season return flow was 186,000 acre-feet. On this basis, the net diversion for 185,000 acres in the general area, including Mud Lake, was 4.35 acre-feet per acre. In view of these facts, any alteration in the present use of water in the Henrys Fork Valley would affect not only the established irrigation economy in that valley, but also that in the Mud Lake area.

Summary

From the very inception of Water District 36 (1916) and the Committee of Nine (1919) the area can be credited with many innovations of progressive water management which can best be summarized as a water banking operation. These include operation of storage reservoirs as a system rather than a collection of individual reservoirs. Although there is a strict paper accounting of water accruals to individual reservoirs by priority dates, advantage has been taken of the physical diversity of the system by holding carryover storage as far upstream as possible to the advantage of all. Much litigation was avoided and a smooth-running operation resulted from agreement on such factors as evaporation and conveyance losses and bank storage. The area pioneered water exchanges in Idaho, culminating in a future ground water-surface water exchange imbedded in the Lower Teton Project authorization. A continuation of this principle will be the salvation of the Salmon Falls, Oakley Fan, and other water-deficient areas in Upper Snake River Basin.

The elimination of winter water runs for stock and domestic use, the establishing of uniform storage water holdover privileges, the coordinated system-wide operation of reservoirs, the subordination of winter power production to conserve storage, and the exchange of storage space to effectuate its use closer to points of diversion, all have resulted in better distribution and utilization of the waters of Snake River. These water conservation practices will provide a water savings in excess of 600,000 acre-feet annually to augment dry-year supplies. This is a significant step in the direction of obtaining full use of the available water supplies in Snake River. In the future more needs to be done in water saving through added cooperation among all water users. These include additional reservoirs, canal lining programs, further water exchanges, including ground water, improved management of water distribution, and increased efficiency of on-farm application and use of water.

This is the situation as it exists today. However, as our technology of water use continues to expand and our available water supplies become more fully utilized, better and more efficient methods of irrigating the lands in the Snake River Valley can be developed. Certainly we should endeavor to make the most efficient use of all our natural resources and as new and better techniques are developed we should put them to their maximum use. The accomplishments so far have resulted from the cooperative effort of the entire area. Future developments for the conservation and use of Idaho's land and water resources will require similar mutual understandings and cooperation by all concerned parties.



CONTOURS ON THE WATER TABLE AND FLOW NET OF THE SNAKE PLAIN AQUIFER

Exhibit B

Contract No. 14-06-W-24

CONTRACT BETWEEN

THE UNITED STATES OF AMERICA
and
ABERDEEN-SPRINGFIELD CANAL COMPANY

Concerning Storage Capacity in American Falls and
Palisades Reservoirs, and Related Matters

Minidoka and Palisades Projects - Idaho

Contract No. 14-06-W-24

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Reclamation

Minidoka and Palisades Projects
Idaho

Contract With
ABERDEEN-SPRINGFIELD CANAL COMPANY
Concerning Storage Capacity in American Falls and
Palisades Reservoirs, and Related Matters

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Contract No. 14-06-W-24

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Reclamation

Minidoka and Palisades Projects
Idaho

Contract With
ABERDEEN-SPRINGFIELD CANAL COMPANY
Concerning Storage Capacity in American Falls and
Palisades Reservoirs, and Related Matters

THIS CONTRACT, Made this 22nd day of October 1952, pursuant to the Federal Reclamation Laws, between THE UNITED STATES OF AMERICA (hereinafter called the United States), acting through the Under Secretary of the Interior, and ABERDEEN-SPRINGFIELD CANAL COMPANY (hereinafter called the Company), a corporation organized and existing under the laws of the State of Idaho and having its principal place of business at Aberdeen, Idaho,

WITNESSETH, That:

2. WHEREAS, the United States, under the Federal Reclamation Laws, has heretofore constructed and is now operating Jackson Lake, Island Park, American Falls, and Lake Walcott reservoirs, among others, and is now constructing Palisades Dam and Reservoir Project (herein called the Palisades Project);

3. WHEREAS, the Company, desiring to cooperate with the United States and the various other water users organizations that enter into like contracts in the water conservation program that will be

made possible with the construction of Palisades Reservoir and its operation in conjunction with other Federal reservoirs on the Snake River, as herein proposed, has heretofore made application to contract for the use for its benefit of storage capacity in American Falls and Palisades reservoirs; and

4. WHEREAS, the United States and the Company, serving an upper valley area, have heretofore entered into the following contracts with respect to storage rights in Federal reservoirs on the Snake River above Milner Dam:

In Jackson Lake Reservoir, contract dated June 4, 1917, and contract with the American Falls Canal Securities Company dated December 28, 1917, assigned to the Company April 8, 1919.

In American Falls Reservoir, contract dated December 15, 1925, Symbol and No. I2r-1173, as amended by contracts dated December 16, 1925, and December 12, 1927 (referred to hereinafter collectively as the contract of December 15, 1925, as amended, Symbol and No. I2r-1173), as supplemented by contract dated October 12, 1927, Symbol and No. I1r-258, as amended by contracts dated May 5, 1932, and May 1, 1933 (referred to hereinafter collectively as the contract of October 12, 1927, as amended, Symbol and No. I1r-258).

NOW, THEREFORE, in consideration of the mutual and dependent covenants hereinafter stated, it is hereby agreed between the parties hereto as follows:

Definitions

5. The following terms, wherever used in this contract, shall have the following respective meanings:

"Secretary" shall mean the Secretary of the Interior or his duly authorized representative.

"Federal Reclamation Laws" shall mean the Act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplemental thereto, including the Act of September 30, 1950 (Public Law 864, 81st Congress, 2d Session).

"Advisory Committee" shall mean the committee defined by article 42 of this contract or its duly authorized representative.

"Irrigation season" shall mean a period of each year beginning April 1 and ending October 31 of that year.

"Storage season" shall mean, with respect to the reservoir involved, the period beginning October 1 of one year and ending during the next year when, as to the particular reservoir, no more water is available for storage.

"Reservoir system" shall mean the existing and authorized Federal reclamation reservoirs on the Snake River and its tributaries down to and including Lake Walcott.

"Upper valley" shall mean the irrigated areas of the Snake River Basin that are served by canals diverting from the Snake River and its tributaries above American Falls Dam.

"Lower valley" shall mean the irrigated areas of the Snake River Basin that are served by canals diverting from

the Snake River and its tributaries between American Falls Dam and Milner Dam.

"Watermaster" shall mean the officer of the State of Idaho charged by law with the distribution of Snake River water in the lower and upper valleys, or such other officer properly authorized by law and designated by mutual agreement of the Secretary and the Advisory Committee.

Provisions Relating to Storage Capacity in
American Falls Reservoir
(Articles 6 through 11)

Capacity to be Available to the Company

6. (a) The United States will operate and maintain the existing American Falls Dam and Reservoir, and beginning with the first irrigation season following the termination, as announced by the Secretary, of the lease of reserved capacity to the American Falls Reservoir District under the lease dated April 23, 1947, as amended (I74r-532), will make available to the Company stored water accruing to five thousand four hundred nineteen ten thousandths per cent (0.5419%) of the active capacity of that reservoir within the limits and on the terms and conditions provided in this contract. This percentage shall, so long as the reservoir has an active capacity of 1,700,000 acre-feet, be treated as the equivalent of 9,212-acre-feet of active capacity. The latter figure may, however, be adjusted from time to time by agreement between the Secretary and the Advisory Committee whenever there are determinations that the active capacity is other than above stated.

(b) The amount of active capacity defined in (a) of this article comprises a net amount of 9,212 acre-feet, which amount is derived from the sum of these: 45,923 acre-feet, being a portion of the reserved capacity with respect to which the Secretary is authorized to contract under the provisions of the Act of September 30, 1950, and 5,457 acre-feet, being the capacity that was initially made available to the Company under its contracts with the United States, dated December 15, 1925, as amended (Symbol and No. I2r-1173), as supplemented by the contract of October 12, 1927, as amended (Symbol and No. I1r-258), less 42,168 acre-feet; being the capacity which, by operation of article 18 of this contract, is permanently transferred to Jackson Lake Reservoir. This net amount represents, as of the date of this contract, these respective storage rights: 152 acre-feet of Company-owned rights in lieu of those acquired under the contract dated December 15, 1925, as amended (Symbol and No. I2r-1173); 374 acre-feet of privately-owned rights in lieu of those acquired under the contract dated October 12, 1927, as amended (Symbol and No. I1r-258); 452 acre-feet of privately-owned rights in lieu of those acquired under the contract dated December 15, 1925, as amended (Symbol and No. I2r-1173); and 8,234 acre-feet of Company-owned rights acquired under this contract.

Construction Charge Obligation

7. (a) Notwithstanding the transfer of American Falls space to Jackson Lake Reservoir as provided by article 18, the Company

shall pay to the United States with respect to the 45,923 acre-feet of the reserved capacity made available as provided in (b) of article 6, as the construction charge obligation, the sum of two hundred thousand five hundred eighty-five dollars and thirty-six cents (\$200,585.36), less the Company's proportionate share of the net leasing revenues creditable to the 315,000 acre-feet of reserved American Falls space, determined by the Secretary in accordance with the provisions of section 3 of the Act of September 30, 1950. The Company's share of the net leasing revenues available for application hereunder through December 31, 1951, is one hundred eight thousand five hundred eighty-one dollars and five cents (\$108,581.05). The amount of such net leasing revenues thereafter becoming available for application hereunder and the Company's share thereof shall be determined on or before December 31 of the year when stored water for irrigation purposes first becomes available in Palisades Reservoir and a written statement of the determinations made shall be furnished promptly to the Company. Payment for original construction costs allocable to the capacity made available to the Company under the contract of December 15, 1925, as amended (Symbol and No. I2r-1173), as supplemented by the contract of October 12, 1927, as amended (Symbol and No. I1r-258), referred to in article 6, has heretofore been made in full.

(b) The construction charge obligation hereunder shall be repaid by the Company to the United States in six (6) successive

annual instalments, beginning December 31, 1953, each instalment to be paid on or before December 31 of the year in which it is due. Prior to the determination and announcement of the total amount of net leasing revenue that is apportionable to the Company's construction charge obligation hereunder, each annual instalment shall be fifteen thousand three hundred thirty-four dollars and five cents (\$15,334.05). After such determination has been made, the then unaccrued balance of the construction charge obligation, taking account of the deduction of the Company's share of leasing revenues, shall be paid over the remaining years of the repayment period in annual instalments that are as nearly equal as is practicable.

Operation and Maintenance Obligation

8. (a) The Company, during the period of operation and maintenance of American Falls Dam and Reservoir and related works (herein called storage works) by the United States, shall pay to the United States the share of costs of operation and maintenance of the storage works, including whatever costs may be incurred in the delivery of water therefrom, which is apportionable to the irrigation storage rights therein and which is allocable to the Company's rights defined in article 6. In determining the total costs apportionable annually to the irrigation storage rights in these works there shall be included payments required to be made in accordance with the provisions of articles 9 and 24, but there shall be excluded whatever amounts are required to be paid as American Falls operation and

maintenance charges under the contract of June 15, 1923, between the Idaho Power Company and the United States, as it may hereafter be amended.

(b) Beginning with the 1953 irrigation season, payment of the Company's share of operation and maintenance costs of American Falls Reservoir shall be made for each calendar year on the basis of annual estimates by the Secretary. The notice of these annual estimates, hereinafter referred to as the operation and maintenance charge notice, shall contain a statement of the estimated cost of operation and maintenance of the storage works to be incurred for the calendar year involved, the amount thereof apportionable to the irrigation storage rights therein, and the amount of the Company's share of these estimated costs. The operation and maintenance charge notice shall be furnished to the Company on or before February 1 of the calendar year for which the notice is issued, but, when requested by the Company, a preliminary estimate shall be given at such earlier date as is agreed on in writing. The Company shall pay the amount stated in the notice on or before April 1 of the year for which it is issued or such other date as may be agreed on in writing.

(c) Whenever in the opinion of the Secretary funds so advanced will be inadequate to operate and maintain the storage works, he may give a supplemental operation and maintenance charge notice, stating therein the amount of the Company's share of the additional funds required, and the Company shall advance that additional amount

on or before the date specified in the supplemental notice. If funds advanced by the Company under this article exceed the Company's share of the actual cost of operation and maintenance of the storage works for the year for which advanced, the surplus shall be credited on the operation and maintenance charges to become due for succeeding years.

Adjustment for Twin Falls Canal Company's Share of
Net Leasing Revenues

9. Of the net leasing revenues creditable to the 315,000 acre-feet of American Falls reserved space, as of December 31, 1951, seventy-three thousand seven hundred seventy-three dollars and fourteen cents (\$73,773.14) would have been available to the Twin Falls Canal Company for application on the construction charge obligation of American Falls reserved space which that company might have acquired. In consideration of the Twin Falls Canal Company's foregoing participation in that reserved space and of the canal company's share of the credit being applied against the construction charge obligation of the reserved space made available to the water users, including the contracting company, the latter company will pay to the United States the sum of eight thousand eight hundred eighty-two dollars and seventy-nine cents (\$8,882.79) for payment to the Twin Falls Canal Company or for crediting on obligations in connection with the reservoir system to become due from the canal company to the United States. This amount shall be paid to the United States in six (6) annual instalments of one thousand four hundred eighty dollars and

forty-seven cents (\$1,480.47), each annual amount to be paid along with the Company's operation and maintenance obligation as provided by article 8.

Nature and Extent of American Falls Reservoir Storage Right

10. (a) Beginning with the 1953 irrigation season, the Company shall be entitled to have delivered to it during each irrigation season its proportionate share of all irrigation water stored in American Falls Reservoir during the storage season ending during or immediately preceding that irrigation season. The Company shall also be entitled to have held over from one irrigation season to the next for its use in that next season stored water to which it is entitled, but the total amount of stored water which will be held over for the use of the Company during an irrigation season shall not exceed the amount that can be stored in the space made available to the Company under (a) of article 6.

(b) Stored water available under the rights in American Falls Reservoir as defined in this contract shall be available for delivery to the Company during any irrigation season within these limitations:

That the delivery of such water can be effected by an exchange of water, pursuant to the provisions of article 25, with lower valley owners having stored water available for delivery from an upstream reservoir.

Status of Company's Rights Under Prior
American Falls Contracts

11. (a) Beginning January 1, 1953, this contract supersedes and takes the place of the contract of December 15, 1925, as amended (Symbol and No. I2r-1173), being the contracts covering the purchase initially of 2,127.5 acre-feet of storage and the rebate storage of 1,243.5 acre-feet; and of the contract of October 12, 1927, as amended (Symbol and No. I1r-258), being the contracts under which 2,086 acre-feet of optioned capacity was acquired. Except as to the provisions in those contracts which have been fully executed prior to January 1, 1953, which shall remain unaffected hereby, these contracts shall continue in effect only to the extent expressly provided herein.

(b) Certain lands which are entitled to receive water by reason of the rights in the Company under this contract are also entitled to receive water under rights created by the contract between the United States and the American Falls Reservoir District, dated June 15, 1923, as amended (Symbol and No. I1r-168), but neither that contract nor any rights or obligations thereunder are intended to be altered in any respect by this contract. By a separate contract with that district, however, there will be a permanent exchange of American Falls and Jackson Lake rights which, when effected, will result in there being held by the district for lands served by the Company 29,443 acre-feet of capacity in Jackson Lake Reservoir below elevation 6752 feet above sea level (U.S.G.S. datum), herein referred to

as elevation 6752, and 6,433 acre-feet of capacity in American Falls Reservoir.

Provisions Relating to Storage Capacity in
Palisades Reservoir
(Articles 12 through 17)

United States to Construct Works

12. (a) Within the limits of the authorization therefor, the United States is now constructing and will complete and operate and maintain Palisades Dam on the Snake River in the vicinity of Irwin, Idaho, to provide a reservoir of an active capacity of about 1,200,000 acre-feet, and related facilities, substantially in accordance with the plans set forth in House Document No. 720, 81st Congress.

(b) When the dam and reservoir are ready for the storage and delivery of water for irrigation purposes, the Secretary shall so announce, including a statement of the active capacity that will be available for irrigation storage.

Capacity to be Available to the Company

13. The authorized dam will provide a reservoir with an estimated active storage capacity of 1,200,000 acre-feet and, based on that estimated capacity, the use and benefit of twelve and seven thousand three hundred thirty-three ten thousandths per cent (12.7333%) of that capacity is allocated hereby to the Company. Beginning with the first full irrigation season after the Secretary has announced that the reservoir is ready for storage and delivery

of water for irrigation purposes, the United States will make available to the Company the stored water accruing to that percentage of the active capacity of that reservoir, within the limits and on terms and conditions provided in this contract. That percentage shall, so long as the reservoir has an active capacity of 1,200,000 acre-feet, be treated as the equivalent of 152,800 acre-feet of active capacity. The latter figure may, however, be adjusted from time to time by agreement between the Secretary and the Advisory Committee whenever there are determinations that the active capacity is other than above stated.

Construction Charge Obligation

14. (a) The Company shall pay to the United States for the use of space as provided in article 13, as the construction charge obligation, the sum of one million three hundred seventy-five thousand two hundred dollars (\$1,375,200), this being determined at the rate of nine dollars (\$9.00) per acre-foot of capacity and on the assumption that the reimbursable construction costs of the Palisades Project finally allocated to joint facilities equal or exceed the sum of twenty-three million two hundred one thousand one hundred dollars (\$23,201,100). If the reimbursable joint facility construction costs, as finally determined, are less than twenty-three million two hundred one thousand one hundred dollars (\$23,201,100), and, as a result, the amount of joint facility costs allocated to irrigation is less than the amount expected so to be allocated according to the Secretary's

report of July 1, 1949^{1/}, the amount of the reduction shall be proportioned between irrigation construction costs assigned to be repaid by the water users and those assigned for repayment from power revenues on the basis of the amounts of estimated irrigation construction costs so assigned in the Secretary's report of July 1, 1949. The amount of reduction, if any, when determined by the Secretary, shall be distributed equally as a credit against the construction charge obligation of all space the costs of which are allocated to irrigation. The total amount of credit and the portion thereof to which the Company is entitled shall be announced in writing by the Secretary promptly after final construction costs are determined and the allocations thereof are made. In no event, however, shall the credit be such as to reduce the Company's total construction charge obligation to less than one million one hundred eighty-four thousand two hundred dollars (\$1,184,200), this being at the rate of seven dollars and seventy-five cents (\$7.75) per acre-foot of capacity as initially stated in article 13.

(b) The construction charge obligation under this article shall be repaid by the Company to the United States in forty (40) successive annual instalments to be as nearly equal as is practicable. The due date of the initial instalment, established in relation to

^{1/} Of the estimated joint facility construction costs, \$21,724,400 were allocated to irrigation under the report approved and adopted by the Secretary on July 1, 1949 (H. Doc. No. 720, 81st Cong.).

the date announced by the Secretary as the date that the dam is substantially complete and ready for storage, will be as follows: (i) if, on the announced date, the provisions of (d) of article 32 are still in effect, the first instalment shall be payable on or before December 31 of the third full calendar year after that date, the project for repayment purposes being treated as incomplete during the first two years; and (ii) if, on the announced date, the provisions of (d) of article 32 are no longer in effect, the first instalment shall be payable on or before December 31 of the first full calendar year after that date. In the event there is, under the operation of (a) of this article, a reduction in the Company's total obligation after the payment of instalments has started, the amount of credit available shall be distributed evenly over the remaining unaccrued instalments as of the time the amount of the credit is announced.

Operation and Maintenance Obligation - Palisades

15. (a) The Company, beginning as provided in (b) of this article and continuing during the period of operation and maintenance of the Palisades Dam and Reservoir by the United States, shall pay to the United States in advance twelve and seventy-three hundredths per cent (12.73%) of the costs of operating and maintaining that dam and reservoir, including whatever costs may be incurred in the delivery of water therefrom, which are apportionable to the irrigation storage rights therein. There shall be determined from time to time by the Secretary, after consultation with the Advisory Committee, the basis

for distributing among the various purposes which by law are to be served by the dam and reservoir the costs of operation and maintenance thereof and the basis for assigning those costs for repayment. In determining the total costs annually apportioned to the irrigation storage rights there shall be deducted from the total annual cost of operation and maintenance of the dam and reservoir, those costs which are determined to be properly chargeable to other purposes served by the reservoir and for which other provision for repayment, in whole or in part, is made pursuant to law. The costs apportionable to the irrigation storage rights shall be distributed annually to all storage space that is made available for irrigation purposes.

(b) Beginning with January 1 of the year in which the use and benefit of Palisades space is first available to the Company, as provided in article 13, payment of the Company's share of Palisades Dam and Reservoir operation and maintenance costs shall be made for each calendar year on the basis of annual estimates by the Secretary. The notice of these annual estimates, hereinafter referred to as the operation and maintenance charge notice, shall contain a statement of the estimated cost of operation and maintenance of the dam and reservoir to be incurred in the calendar year involved and the amount of the Company's share of those estimated costs. The operation and maintenance charge notice shall be furnished to the Company on or before February 1 of the calendar year for which the notice is issued, but, when requested by the Company, a preliminary estimate shall be

given at such earlier date as is agreed on in writing. The Company shall pay the amount stated in the notice on or before April 1 of the year for which it is issued or such other date as may be agreed on in writing.

(c) Whenever, in the opinion of the Secretary, funds so advanced will be inadequate to meet the Company's share of the costs of operating and maintaining the dam and reservoir, he may give a supplemental operation and maintenance charge notice, stating therein the amount of the Company's share of the additional funds required, and the Company shall advance that additional amount on or before the date specified in the supplemental notice. If funds advanced by the Company under this article exceed the Company's share of the actual costs of operation and maintenance of the dam and reservoir for the year for which advanced, the surplus shall be credited on the operation and maintenance charges to become due for succeeding years.

Nature and Extent of Palisades Storage Right

16. (a) Beginning with the storage season indicated in article 13, the Company shall be entitled to have the following storage rights in Palisades Reservoir:

- (1) The right to have stored to its credit during each storage season, twelve and seven thousand three hundred thirty-three ten thousandths per cent (12.7333%) of all water stored in Palisades Reservoir during that season under the Palisades storage right.

- (2) The right to have stored to its credit during each storage season and with a priority as indicated in article 17, water to which it is entitled through the curtailment of water diversions as provided in that article.
- (3) The right to have held over from one irrigation season to the next, stored water to which it is entitled.

The total amount of stored water to the Company's credit at any time shall not, however, exceed the total amount of space in the reservoir available to the Company under this contract, and the Company's storage rights in Palisades Reservoir are hereby made subject to the provisions of (c) of this article.

(b) Stored water available under the rights in Palisades Reservoir created by this contract shall be available for delivery to the Company during any irrigation season within these limitations:

- (1) Except in cases of emergency, deliveries shall be limited to periods when the Company's natural flow rights and stored water in reservoirs downstream from Palisades Reservoir are not sufficient to meet the Company's irrigation water requirements.
- (2) Deliveries shall be limited at any time to the amount which can be delivered by means of the

Company's proportionate share of the outlet capacity, taking into account the requirement of passing through the reservoir water belonging to prior rights and the physical limitations of the existing outlet works.

(c) Under the provisions of the Act of September 30, 1950, the active capacity of Palisades Reservoir will be used jointly for irrigation and flood control storage in accordance with the operating plan set forth in House Document No. 720, 81st Congress, and attached hereto as Exhibit A, as that plan is implemented by rules and regulations issued pursuant to section 7 of the Act of December 22, 1944 (58 Stat. 890). All the Company's storage rights are subject to the operation of the reservoir in accordance with this subarticle. In the event Palisades Reservoir fails to fill during any storage season by reason of such flood control operations, the amount of shortage so attributable shall be prorated equally over all space allocated to storage of water for irrigation, municipal, or other miscellaneous purposes and shall be charged against all stored water including that, if any, carried over from prior irrigation seasons.

Saving of Winter Water; Special Storage Right

17. (a) Beginning with the date announced by the Secretary as the time when Palisades Reservoir will be ready for operation as provided in article 12, the Company shall, for a period of 150 consecutive days during the period from November 1 through April 30 of each

storage season, make no diversion of water from the Snake River or any of its tributaries by means of its existing diversion works or by any other means.

(b) The total savings of water during each storage season as the result of curtailment of winter diversions by the Company and all other water users organizations diverting from the Snake River who have contracted with the United States to curtail or cease diversions is agreed to be 143,000 acre-feet, of which 135,000 acre-feet are attributable to curtailments by those diverting above American Falls Dam and 8,000 acre-feet below that point. The Company, diverting above American Falls Dam, shall be entitled to store in Palisades Reservoir during each season during which curtailment of winter diversions is made as provided in (a) of this article, 22,860 acre-feet.

(c) The right to store water pursuant to this article shall be prior in time over the storage rights held by the United States for American Falls Reservoir (the latter having a priority dated March 30, 1921), or any storage rights held by the United States or the Company that are junior to the American Falls rights. The Company hereby consents to the granting of special storage rights with a like priority to all water users organizations and all water users who, directly or indirectly, contract to curtail storage season diversions substantially as provided in (a) of this article within these maxima as to total special storage rights:

(1) For water users organizations and water users diverting above American Falls Dam -- 135,000 acre-feet.

(2) For water users organizations and water users diverting between American Falls Dam and Milner Dam -- 8,000 acre-feet, exclusive of the special storage rights described in (d) of this article.

(d) The Company also hereby consents to permitting the North Side Canal Company and the Twin Falls Canal Company to store, in either American Falls or Palisades Reservoir, during the months of November through March of any storage season under a priority like that provided in (c) above, water that would otherwise accrue to them within these rights:

The rights of the North Side Canal Company and of the Twin Falls Canal Company, respectively, to divert at Milner Dam for domestic and livestock uses during those months as follows:

North Side Canal Company 126,000 acre-feet

Twin Falls Canal Company 150,000 acre-feet

within this limitation:

If, taking account of all storable water whether stored or not, Palisades and American Falls reservoirs fail to fill during any storage season, any water diverted during that

storage season by the North Side Canal Company in excess of 126,000 acre-feet (but not to exceed the amount of deficiency in fill), and by the Twin Falls Canal Company in excess of 150,000 acre-feet (but not to exceed the amount of deficiency in fill), will be charged as of the end of that storage season against the allotment of American Falls storage to these respective companies.

This limitation in the case of the North Side Canal Company shall become operative from the date Palisades Reservoir is ready for operation, but in the case of the Twin Falls Canal Company need not be made operative until the first year in which that company exercises the special storage provision to which consent is here given.

Provisions Relating to Exchange and Redefinition of
Existing American Falls and Jackson Lake Storage
Rights; Winter Power Operations at the Minidoka
Powerplant

(Articles 18 through 24)

Permanent Exchange of American Falls and Jackson Lake
Storage Rights

18. (a) The United States will operate and maintain the existing Jackson Lake Dam and Reservoir, and, beginning October 1, 1952, will make available to the Company stored water accruing to nineteen and three thousand eight hundred twelve ten thousandths per cent

(19.3812%) of the active capacity of that reservoir below elevation 6752 within the limits and on the terms and conditions provided in this contract. This percentage shall, so long as the reservoir has a total active capacity of 847,000 acre-feet, be treated as the equivalent of 84,853 acre-feet of the active capacity below elevation 6752. The latter figure may, however, be adjusted from time to time by agreement between the Secretary and the Advisory Committee whenever there are determinations that the active capacity is other than above stated.

(b) The amount of active capacity defined in (a) of this article comprises the total of 40,000 acre-feet of Jackson Lake Reservoir capacity that was initially made available to the Company under its contract dated June 4, 1917 with the United States; 2,685 acre-feet of Jackson Lake Reservoir capacity that was initially made available to the American Falls Canal Securities Company under its contract dated December 28, 1917 with the United States, which contract was assigned to the Company on April 8, 1919; and 42,168 acre-feet of capacity made available by permanent exchange as provided in (c) of this article. The latter amount represents, as of the date of this contract, these respective storage rights: 695.7 acre-feet of Company-owned rights in lieu of those acquired under the contract dated December 15, 1925, as amended (Symbol and No. I2r-1173); 1,712 acre-feet of privately-owned rights in lieu of those acquired under the contract dated October 12, 1927, as amended (Symbol and No. I1r-258);

2,071.3 acre-feet of privately-owned rights in lieu of those acquired under the contract dated December 15, 1925, as amended (Symbol and No. I2r-1173); and 37,689 acre-feet of Company-owned rights acquired under this contract.

(c) The Company, as indicated by (b) of article 6, is entitled to the use of a total of 51,380 acre-feet of the active capacity in American Falls Reservoir, of which 42,168 acre-feet are available for permanent exchange. The United States, as of the date of this contract, operates and maintains for the benefit of the South Side Pumping and the Gravity divisions of the Minidoka Project and for the North Side Canal Company, the following rights to capacity in Jackson Lake Reservoir below elevation 6752:

Minidoka Project 325,810 acre-feet

North Side Canal Company 10,000 acre-feet

In order to assist in effecting the permanent exchange of these Jackson Lake rights for an equivalent amount of space in American Falls Reservoir, beginning October 1, 1952, there is hereby available to the Company 42,168 acre-feet of active capacity in Jackson Lake Reservoir below elevation 6752, within the limits and on the terms and conditions provided in this contract, this being in lieu of an equivalent amount of American Falls storage capacity.

Guarantee in Event Minidoka Exchanged
Space Fails to Fill

19. Under the provisions of article 18 above and similar provisions in contracts with other holders of storage rights in American

Falls Reservoir, holders of storage rights in American Falls Reservoir will have acquired in lieu of those rights seventy-six and seven tenths per cent (76.7%) of the total active capacity in Jackson Lake Reservoir below elevation 6752 as of October 1, 1952, these rights in Jackson Lake Reservoir being hereinafter called the upper valley exchanged space; and nineteen and seventy-five hundredths per cent (19.75%) of the active space in American Falls Reservoir will be held for the South Side Pumping and the Gravity divisions of the Minidoka Project (nineteen and sixteen hundredths per cent (19.16%)) and the North Side Canal Company (fifty-nine hundredths per cent (0.59%)), these rights being hereinafter called collectively the lower valley exchanged space. The seventy-six and seven tenths per cent (76.7%) in Jackson Lake and the nineteen and seventy-five hundredths per cent (19.75%) in American Falls shall, so long as the respective active capacities are not less than 847,000 and 1,700,000 acre-feet, be treated as the equivalent of 335,810 acre-feet. The latter figure may, however, be adjusted from time to time by agreement between the Secretary and the Advisory Committee whenever there are determinations that the active capacity is other than above stated. Beginning with the 1952-1953 storage season, there shall be a determination, at the end of each storage season in which the lower valley exchanged space fails to fill, taking carryover storage into account, (1) of the amount by which the American Falls storable inflow to which the lower valley exchanged space was entitled during that season failed to fill that

space; and (2) of the amount, if any, by which the Jackson Lake storable inflow to which the upper valley exchanged space was entitled during that season failed to fill that exchanged space. If the amount under (1) exceeds that under (2), there shall be credited to the lower valley exchanged space and charged to the upper valley exchanged space an amount of stored water equal to the difference, but not in excess of the amount required to fill the lower valley exchanged space as of the end of that storage season. The determinations under this article shall be made by a committee of three comprising the state watermaster of District No. 36, a representative to be selected jointly by the Burley and Minidoka irrigation districts and the North Side Canal Company, and the officer of the United States in charge of the Minidoka Project.

Redefinition of Jackson Lake Storage Rights

20. (a) Beginning with the 1952-1953 storage season, the United States will operate Jackson Lake Reservoir so as to hold over, in any space available in the reservoir, from one irrigation season to the next for use in that next season, stored water to which any holder of space in the reservoir is entitled, but the total amount of stored water which will be held for the use of any holder of space during any irrigation season shall not exceed the space available to that holder. The United States shall, however, in its operation of the reservoir, have the right, after consultation with the Advisory Committee, to lower the water surface elevation in Jackson Lake in each

storage season in order to avoid damage to the dam during winter weather and to provide incidental flood control, but, except in cases of operation and maintenance emergencies, such release of water shall not result in loss of storable water in that storage season. If losses do result, these shall be prorated equally over all space in the reservoir and shall be charged against stored water including that, if any, carried over from prior irrigation seasons. Determination of the relative rights of the various holders of space in the reservoir to reservoir inflow during each storage season shall, however, continue to be on the basis of the difference in priorities for the storage of water held by the United States for the capacity below elevation 6752 and those held for the capacity above that elevation.

(b) Stored water available under the rights in Jackson Lake Reservoir as defined in this article shall be available for delivery to the Company during any irrigation season within these limitations:

- (1) Except in cases of emergency, deliveries shall be limited to periods when the Company's natural flow rights and rights to water stored in reservoirs downstream from Jackson Lake Reservoir are not sufficient to meet the Company's irrigation water requirements.
- (2) Deliveries shall be limited at any time to the amount which can be delivered by means of the

Company's proportionate share of the outlet capacity, taking into account the requirement of passing prior natural flow rights through the reservoir and the physical limitations of the existing outlet works.

Operation and Maintenance Obligation - Jackson Lake

21. (a) The Company, during the period of operation and maintenance of Jackson Lake Dam and Reservoir by the United States shall pay to the United States ten and two hundredths per cent (10.02%) of the costs of operating and maintaining that dam and reservoir, including whatever costs may be incurred in the delivery of water therefrom.

(b) Beginning with the 1953 irrigation season, payment of the Company's obligation under (a) above shall be made for each calendar year on the basis of annual estimates by the Secretary. The notice of these annual estimates, hereinafter referred to as the operation and maintenance charge notice, shall contain a statement of the estimated cost of operation and maintenance under (a) above to be incurred in the calendar year involved, and the amount of the Company's share of these estimated costs. The operation and maintenance charge notice shall be furnished to the Company on or before February 1 of the calendar year for which the notice is issued, but, when requested by the Company, a preliminary estimate shall be given at such earlier date as is agreed on in writing. The Company shall pay the amount stated in the notice on or before April 1 of the year for which issued or such other date as may be agreed on.

(c) Whenever, in the opinion of the Secretary, funds so advanced will be inadequate to meet the costs under (a) above, he may give a supplemental operation and maintenance charge notice, stating therein the amount of the Company's share of the additional funds required, and the Company shall advance that additional amount on or before the date specified in the supplemental notice. If funds advanced by the Company under this article exceed the Company's share of the actual cost under (a) above for the year for which advanced, the surplus shall be credited on the charges to become due for succeeding years.

Relinquishment of Rights in American Falls Reservoir

22. Effective as of October 1, 1952, the Company hereby relinquishes all its rights to 42,168 acre-feet of capacity in American Falls Reservoir as those rights are described in article 18, but there shall be credited to the Company's share of upper valley exchanged space an amount of water equal to the stored water remaining to the credit of the space hereby relinquished as of October 1, 1952. This relinquishment is contingent on there being effective on or before October 1, 1952, or such later date as may be agreed on between the Secretary and the Advisory Committee a relinquishment by the Burley Irrigation District, the Minidoka Irrigation District, and the North Side Canal Company of their respective rights to the 335,810 acre-feet of capacity in Jackson Lake Reservoir now being operated for their benefit by the United States.

Status of Company's Rights Under Prior Jackson Lake
Contracts

23. (a) Beginning October 1, 1952, this contract supersedes and takes the place of the contract of June 4, 1917, between the Company and the United States, and the contract of December 28, 1917, between the American Falls Canal Securities Company, rights in which are now held by the Company. Except as to the provisions of these contracts which have been fully executed prior to that date and which shall remain unaffected hereby, the latter contracts shall continue in effect only to the extent expressly provided herein.

(b) Rights to Jackson Lake Reservoir capacity which lands, having rights through the Company, may have under the contract referred to in (b) of article 11 as it may be amended to provide among other things a permanent exchange of American Falls and Jackson Lake Reservoir capacity, are not intended to be altered in any respect by this contract.

Winter Power Operation: Minidoka Powerplant

24. (a) The United States, in its operation of American Falls and Minidoka dams during the storage season of each year is required to pass through enough water to satisfy existing diversion rights in the stretch of river down to and including Milner Dam and certain power rights below Milner Dam, and has the privilege under an existing decree to use at Minidoka Dam 2,700 cubic feet per second of water for the development of power. While the United States must

operate the American Falls and Minidoka dams so as not to interfere with these third-party rights, it will be the objective of the United States in the operation of both its American Falls and Minidoka powerplants to curtail the release of additional water from American Falls Reservoir for power production at those powerplants during the storage season of any year whenever operation of those powerplants to the full extent of their respective water rights for power production would result in loss of irrigation water otherwise storable in the reservoir system. Accordingly, except as it is determined by the Secretary that additional water may be passed through American Falls and Minidoka dams without the loss of water that could be stored for irrigation in the reservoir system, the United States will, during each storage season beginning October 1, 1952, and continuing so long as the provisions of (c) of this article remain operative, limit the release of water through those dams as follows:

To the amount of water required to provide flows below Minidoka Dam sufficient to meet existing diversion rights in the reach of the river through Milner Dam and the power rights required to be recognized under the provisions of the contract of June 15, 1923, between the United States and the Idaho Power Company (Symbol and No. Ilr-733), as those diversion and power rights may be modified from time to time.

To the extent that it is practicable to do so, the Advisory Committee will be informed in advance of any plans for the release of water in excess of the foregoing limitations; and that Committee will be furnished written reports as of the close of the storage season of each year showing, among other things, the releases actually made and the minimum releases required to be made.

(b) Curtailment of releases as provided in (a) of this article will result in there being, in some years, additional water available for storage for irrigation purposes in American Falls, Island Park, and Palisades reservoirs. In any storage season when these reservoirs fail to fill, the saved water attributable to such curtailment shall be credited, first, to Island Park Reservoir to the extent of 45,000 acre-feet without regard to the priority of the storage permits held for that reservoir, and thereafter to American Falls, Island Park, and Palisades reservoirs in the order of priority of their respective storage permits, the crediting to Island Park Reservoir and to any storage right in any other reservoir (except the lower valley exchanged space in American Falls Reservoir) being contingent on the owners of these rights obligating themselves for their share of the annual payments for power replacement in keeping with the provisions of (a) of this article.

(c) For the purposes of this contract and without relinquishment of any part of the power rights herein described, it is assumed that but for curtailment of operations as provided in (a) of

this article, units 1 through 6 of the Minidoka powerplant would be operated during the storage season of each year to the maximum extent practicable within the limits of the power rights therefor (2,700 second-feet as decreed by the District Court of the Fourth Judicial District of Idaho on June 20, 1913, in the case of Twin Falls Canal Company v. Charles N. Foster, et al.) and that in consequence of operations under this article there may be losses in the production of power and energy at that plant. To offset such losses, the United States will, as nearly concurrently as practicable, make replacement by the delivery of power and energy into the Minidoka power system at the Minidoka powerplant from other interconnected Federal powerplants being operated under the Federal Reclamation Laws. Payment for such replacement power and energy shall be made by the Company and all other contractors having reservoir rights benefiting from the water savings resulting from operations under the provisions of (a) of this article in annual amounts determined as follows:

- (i) Prior to the date when either the American Falls powerplant or Palisades dam powerplant is first in service, the payment for any year shall be the product, in dollars, of the then controlling average annual replacement requirement, in kilowatt-hours, times four mills (\$0.004).
- (ii) Beginning with the date when either the American Falls powerplant or Palisades dam powerplant is

first in service, the payment for any year shall be the product, in dollars, of the then controlling average annual replacement requirement, in kilowatt-hours, times the price per kilowatt-hour, figured at 100 per cent load factor, under the then existing rate schedule for the sale of firm power and energy from the plant or plants involved.

In determining replacement requirements under this article, no account is intended to be taken, by way of offset or otherwise, of the effect of any reservoir system storage operations on the seventh unit of the Minidoka powerplant.

(d) The replacement requirements for the year ending September 30, 1953, shall be 5,699,000 kilowatt-hours, being the average annual replacement requirement for the period beginning October 1, 1931, and ending September 30, 1951. The average annual replacement requirement under either (i) or (ii) of (c) above for the year ending September 30, 1954, shall be the average of the annual replacement requirements for each year of the 20-year period ending September 30, 1953, and for each 12-month period after September 30, 1954, shall be the average of the annual replacement requirements of each year of the 20-year period ending on September 30 of the prior year. In deriving this average there shall be used, as annual net power production losses for each year, the annual figures for the years through

September 30, 1951, as shown in Table 1 of the document entitled "Criteria and Method for Determination of Certain Minidoka Powerplant Production Losses from Restrictions on Use of Water Rights"^{2/}, and for each year thereafter, a net power production loss calculated on the basis of the comparison of (1) the total energy that could have been produced by units 1 through 6 of the Minidoka powerplant based on the water flows actually recorded at the U.S.G.S. Minidoka gaging station (hereinafter called the Minidoka gage), corrected as hereinafter provided, and (2) the energy which theoretically could have been generated at those units with the flows at the Minidoka gage without a curtailment in winter power operation as provided in this article and exclusive of irrigation storage releases. Using conclusions reached as to flows and heads, the power loss calculations will be made by utilizing the power production curves shown in drawing No. 17-100-139 incorporated by reference in the document identified above, but increases in energy in any year by reason of taking American Falls storage into account as provided in subparagraph (iii) of this subarticle (d) shall be accounted for as compensating offset up to but not exceeding energy losses accruing in that year by reason of curtailment in power operations under this article.

To correct flows under (1) above, all storage releases except American Falls shall be excluded and the measure of American

^{2/} Duplicate originals of this document shall be filed with the watermaster of District No. 36, the officer of the United States in charge of the Minidoka Project, and the Burley Irrigation District.

Falls storage passing the Minidoka gage shall be the increase in storage at that gage over that computed at the Blackfoot gaging station as shown in the annual report entitled "Water Distribution and Hydrometric Work, District 36, Snake River, Idaho", the latter further corrected for any American Falls storage that may have been present by reason of having been stored temporarily upstream and that portion of Palisades storage which was diverted above the Minidoka gage. In measuring American Falls storage, it shall be assumed that storage is released in the order provided in articles 16 and 20. The flow at the Minidoka gage without storage shall be taken to be the normal flow at that gage as shown by that same report. In determining water flows, with and without curtailment of power operations as provided in this article, these assumptions shall be used with respect to units 1 through 6 of the Minidoka powerplant:

- (i) There is a right for power production to maintain a flow of 2,700 second-feet at Minidoka Dam during the storage season of each year in accordance with the decree entered June 20, 1913, supra, if that flow, disregarding the storage of saved water in the reservoir system under the provisions of this article, would be available at Minidoka Dam.
- (ii) There is a right to use, within the hydraulic capacity of these units, whatever natural flow passes Minidoka Dam during each irrigation season.

(iii) Although there is no right to have water stored under American Falls Reservoir rights released for power production, during the period that such storage is being released for irrigation there will be more energy produced by these units than is attributable to the natural flow rights therefor, which shall be taken into account as a compensating offset as provided above in this sub-article (d).

To determine controlling power heads, the effective power head for any period shall be derived on the basis of recorded forebay and tailwater elevations for that period.

The foregoing criteria for determinations of annual net power production losses may be changed from time to time but only if the changes are made in writing with the approval of the Secretary, the Advisory Committee, and the boards of directors of both the Burley and Minidoka irrigation districts. Determinations as to net power production losses for each year and the average annual replacement requirement under this article shall be made by the Committee constituted as provided in article 19, but, should that Committee fail to make a determination for any year by January 1 of the year for which the determination is required, it may be made by the Secretary.

(e) The annual payment determined as provided in this article shall be apportioned among the benefiting reservoirs as follows: (i) prior to the first full storage season during which Palisades Reservoir is in operation, eighty-eight per cent (88%) to American Falls Reservoir and twelve per cent (12%) to Island Park Reservoir; and (ii) beginning with the first full storage season of Palisades operation, seventy-eight per cent (78%) to American Falls, twelve per cent (12%) to Island Park, and ten per cent (10%) to Palisades. The amount apportioned to each reservoir shall be accounted for as part of the operation and maintenance costs for which provision for payment for the Company's share is made elsewhere in this contract. The amount apportioned to American Falls Reservoir shall be distributed equally over all space available for irrigation storage, excluding the lower valley exchanged space but including in lieu thereof the upper valley exchanged space in Jackson Lake Reservoir.

(f) If the owners of any storage rights to benefit from the operation of this article fail to obligate themselves for their share of the annual payments for power replacement hereunder, the saved water creditable to such rights and the power replacement costs chargeable thereto shall be redistributed according to a formula to be agreed on in writing between the Advisory Committee and the Secretary. Such formula shall, however, be as nearly consistent as practicable with the formula that would control but for such redistribution.

Provisions of General Application to All
Rights Established or Defined by This
Contract
(Articles 25 through 51)

Temporary Storage and Exchange of Water; Release of Jackson
Lake and Palisades Water for Power Production

25. (a) It is the purpose of the United States and the water users having storage rights in the reservoir system (including the Company) to have the reservoir system so operated as to effect the greatest practicable conservation of water. In keeping with this purpose, the endeavor will be to hold stored water in reservoir system space that is farthest upstream. Water in storage in any of the reservoirs of the system may, however, when the watermaster and the Advisory Committee determine this to be in the interest of water conservation, be held temporarily in unoccupied space in any other reservoir of the system. And the Company hereby consents to the making, with the approval of the watermaster, of annual exchanges of stored water among the various reservoirs of the system. No such temporary holding of water or such annual exchanges shall, however, deprive any entity of water accruing to space held for its benefit.

(b) During any storage season, the United States, after consultation with the Advisory Committee, may release stored water from Jackson Lake and Palisades reservoirs for the maintenance of power production at Palisades dam powerplant and may store such water, as Jackson Lake or Palisades water as the case may be, in American Falls Reservoir. The release of such water will be confined, however,

in storage seasons when it appears that American Falls, Palisades, and Jackson Lake reservoirs will fail to fill; to water required for the maintenance of a minimum firm power production (estimated to be about 11,000,000 kilowatt-hours per month at an average production of 15,000 kilowatts) and which can be stored in American Falls Reservoir; and no such release shall be made that will preclude the later delivery of water, by exchange or otherwise, to the upper valley entities entitled thereto.

Rental of Water; Sale of Space

26. (a) The Company may rent stored water which has accrued to its credit in any reservoir of the system, but such rentals shall be for only one year at a time and at rates to be approved in advance by the Secretary and the Advisory Committee. Rates shall not exceed the annual costs under the Company's obligations to the United States which are properly apportionable to such water, plus an amount sufficient to cover other annual costs of the Company which are properly apportionable thereto.

(b) No sale of storage rights in the reservoir system, created or defined by this contract, shall be made except on terms and conditions approved by the Secretary.

Points of Delivery of Water; Measurement and Losses

27. (a) Stored water to which the Company is entitled under this contract will be delivered and measured at the outlets of the reservoir in which the water is actually stored, without regard to

whether it is water accruing to storage rights in that reservoir. The Company will bear all losses chargeable to such water between the outlets of the delivering reservoir and the Company's point of diversion from the river.

(b) In addition to other specific provisions as to the distribution of losses chargeable to stored water, there shall be charged against stored water held under this contract to the credit of the Company in any reservoir of the system at the end of any irrigation season one and one-half per cent ($1\frac{1}{2}\%$) to offset evaporation losses. Such charge shall be made as of not later than the end of the ensuing storage season.

Ordering of Water

28. (a) The ordering of stored water shall be effected by the Company by notifying the watermaster, giving notice a reasonable period in advance, of the amount of water, within the limits of its water entitlements, to be diverted during each day of the irrigation season. The watermaster will be responsible for determining from day to day the amount of stored water required to be released from the various reservoirs of the system to comply with the requirements of the Company and all other entities entitled to the delivery of stored water only in response to orders from the watermaster. The watermaster shall be responsible for determining what portion of the Company's diversions is chargeable to stored water being held in the reservoir system for the Company, and diversions by the Company in

excess of entitlements shall be charged against stored water subsequently accruing to the Company's credit under this contract or any other contract with respect to storage in the reservoir system.

(b) Actions by the watermaster under the provisions of this article shall be as agent of the Company.

Complaints Regarding Water Supply

29. The United States and its officers, agents and employees in charge of reservoirs in the reservoir system and the watermaster will use their best efforts and best judgment to deliver to the Company its proportionate share of the water to which it is entitled under this contract. Should the Company feel aggrieved because of an alleged mistake or inaccuracy in the delivery of water or in the division of stored water among the parties entitled to such water from the reservoir system, the Company shall immediately report such alleged mistake or inaccuracy to the watermaster and to the official of the United States in charge of the reservoir involved. If the watermaster finds that the Company's proportionate share of stored water is not being delivered, he will correct the error as early as possible. No liability, however, shall accrue against the United States, its officers, agents or employees, or the watermaster for damage, direct or indirect, arising by reason of shortages in the quantity of water available through the reservoir system by reason of drought, inaccuracy in distribution, hostile diversions by third parties, prior or superior claims, accident to or failure of the facilities comprising

the reservoir system, whether or not attributable to negligence of officers, agents or employees of the United States, or other similar causes of whatsoever kind. Nor shall the Company's obligations to the United States under this contract be reduced by reason of such shortages or interruptions.

Payment of Costs in Delivery and Distribution
of Stored Water

30. (a) The Company shall pay, in addition to its proportionate share of the costs of operation and maintenance of the various reservoirs as provided under articles 8, 15, and 21 of this contract, its proportionate share of all costs of the delivery and distribution of water beyond the outlet works of the delivering reservoirs. These costs shall include, with respect to costs incurred by the United States, all costs and expense of whatsoever nature or kind in connection with, growing out of, or resulting from the distribution of stored water, the protection of stored water between the reservoir and the points of diversion from the river including the prevention of diversion of such water by parties not entitled thereto. Whatever costs of this character are incurred by the United States shall be distributed among the Company and all others on whose behalf such costs have been incurred on the basis that the operation and maintenance costs of the reservoir from which the water was delivered are distributed among the various rights. Unless otherwise agreed in writing by the Secretary and the Advisory Committee, such costs shall be paid annually and for billing purposes shall be included as part

of the operation and maintenance costs under articles 8, 15, and 21 of this contract.

(b) The Company shall also pay its proportionate share of the costs incurred by the watermaster in the delivery and distribution of water in accordance with the provisions of article 28 to the extent that those represent costs incurred other than by the activities of the United States in the delivery and distribution of water. The costs will be apportioned and paid in accordance with the provisions of the laws of the State of Idaho.

Computation of Costs

31. The costs which enter into the cost of operation and maintenance of the various reservoirs and the costs of delivery and distribution of water, portions of which costs are to be paid by the Company, shall embrace all expenditures of whatsoever kind in relation to the function for which the charge is made, including, but without limitation by reason of this enumeration, cost of surveys and investigations, labor, property, material and equipment, engineering, legal, superintendence, administration, overhead, general expenses, inspection, special services, and damage claims of all kinds whether or not involving the negligence of officers, agents or employees of the United States, but shall be exclusive of amounts which the law does not require to be repaid and which the Secretary determines as a matter of policy are to be treated as nonreimbursable.

Title to and Operation of Powerplants; Power Revenues

32. (a) Title to American Falls dam powerplant and Palisades dam powerplant and all works incidental and appurtenant thereto, built or to be built by the United States, shall remain in the United States until otherwise provided by the Congress.

(b) All revenues derived from the sale or other use or disposal of power and energy developed at the American Falls dam and Palisades dam powerplants shall be and remain the property of the United States.

(c) The United States, in its operation of the American Falls powerplant, will be governed by the provisions of the contract of June 15, 1923, with the Idaho Power Company, as that may be amended, as further limited by the provisions of article 24. The United States, in its operations of the Palisades dam powerplant, will be governed by the provisions of article 25 and these criteria, among others: That the plant shall be operated so as to hold to a practicable minimum the loss of water that would otherwise be available for storage in the reservoir system for irrigation purposes; and that, until such time as a reregulating reservoir has been put into operation, wide fluctuations in the release of water to meet peak power loads will, during irrigation seasons, be confined to periods when this can be done without substantial variation from the flows that would otherwise be present in the river below the dam.

(d) Notwithstanding provisions to the contrary in this contract, the Company consents to the operation of the Palisades dam powerplant, during a five-year period (but not beyond the end of the national defense emergency as declared by Proclamation of the President No. 2914 dated December 16, 1950, 3 CFR 1950 Supp., p. 271), beginning with the date when the first unit of that plant is first placed in service, in the following manner:

In addition to normal operation at other times within the limits provided by this contract the plant may be operated to produce an average of 60,000 kilowatts (217,440,000 kilowatt-hours) during the period October through February of each storage season when the flow of the river at the dam is equal to or greater than that for those months of the median year during the period 1928 through 1947 whenever such operation is required in the judgment of the Defense Electric Power Administrator, or his successor in functions, to help meet certified defense loads served from power systems with which the plant is interconnected, directly or indirectly.

Title to Storage Works; Miscellaneous Revenues

33. (a) Title to American Falls, Palisades, and Jackson Lake dams and reservoirs and all works incidental and appurtenant thereto, built or to be built by the United States, shall remain in the United States until otherwise provided by the Congress.

(b) Miscellaneous revenues realized in connection with the operation and maintenance of American Falls and Jackson Lake dams and reservoirs and related costs shall be distributed among the irrigation storage rights on the same basis that operation and maintenance costs are distributed, such distribution to be effected annually in connection with the final annual adjustments of operation and maintenance costs. Having regard for the allocations of investment and repayment responsibilities, miscellaneous revenues realized in connection with the operation and maintenance of Palisades Dam and Reservoir and related costs shall be distributed annually as follows:

Twenty per cent (20%) to be distributed among the Company and other parties having storage rights in the reservoir on the same basis that operation and maintenance costs are distributed.

Eighty per cent (80%) to remain the property of the United States.

Priority of Certain Existing and Future Water Rights

34. (a) In connection with Island Park Reservoir, located on the North Fork (Henrys Fork) of Snake River, the United States holds water license No. R-590, with a priority date of March 14, 1935, and license No. R-686, with a priority date of June 12, 1940. Notwithstanding the later priority of license No. R-686, the Company hereby agrees that all storage rights held by the United States in connection with Island Park Reservoir may be treated as having the same priority as rights under license No. R-590.

(b) In connection with Idaho Permit No. 15134, a direct diversion permit with a priority date of March 30, 1921, held in connection with American Falls Reservoir, the United States may contract with American Falls Reservoir District No. 2 to recognize the right of that district to have water license No. 15134 exercised substantially as follows:

American Falls Reservoir District No. 2 to have the right to divert as natural flow during each irrigation season under water license No. 15134, having a March 30, 1921 priority, as follows: From May 1 of each irrigation season continuing during that season so long as there is natural flow available for that priority, the first 1,700 cubic feet per second of flow to be available one-half (1/2) to American Falls Reservoir District No. 2 and one-half (1/2) to American Falls Reservoir, except that in any year in which American Falls Reservoir is full to capacity on April 30 or fills after that date, taking into account any water that may be temporarily stored to its credit in upstream reservoirs, all water diverted by American Falls Reservoir District No. 2 within the maximum of 1,700 cubic feet per second during the year prior to the initial storage draft on American Falls Reservoir after the reservoir finally fills in that year shall be considered as natural flow under water license No. 15134. Nothing herein shall prevent American Falls Reservoir

District No. 2 from diverting water under said license prior to May 1 of a given irrigation season but all such diversions shall be charged as storage in the event the reservoir is not full on April 30 of that season or does not fill after April 30 of that season.

Water available at American Falls Reservoir for the March 30, 1921 priority under water license No. 15134, other than that to be available to American Falls Reservoir District No. 2 as above provided, to be available for storage in American Falls Reservoir.

And the Company agrees that it will not oppose an adjudication of a natural flow right of the waters of the Snake River for the benefit of American Falls Reservoir District No. 2 consistent with the foregoing criteria. The contract by the United States with American Falls Reservoir District No. 2 shall be on the condition, however, that that district assume its proportionate share of the obligation for the cost of replacement power under the provisions of article 24. When such contract has become operative, the United States shall make application to the State of Idaho for amendment of water permit No. 15134 and the issuance thereunder with a priority date of March 30, 1921, requiring that the remainder of the right under the permit, 6,300 second-feet, to the extent such right remains outstanding, be used for storage in American Falls Reservoir, such right, however, if issued to the United States not to carry voting privileges in water.

users meetings under the laws of the State of Idaho. Such application shall, however, leave unaffected water license No. R-269 having a priority dated March 30, 1921.

(c) If the United States, under the Federal Reclamation Laws, hereafter constructs storage facilities on the Snake River or its tributaries above Milner Dam in addition to those now constructed or authorized to be constructed to provide water for irrigation purposes, the Company hereby agrees that, notwithstanding the establishment of a storage right for such additional facilities with a priority subsequent to that assigned to Palisades Dam and Reservoir, the United States may hereafter contract with water users organizations which then have storage rights in Palisades Reservoir, to operate not to exceed 300,000 acre-feet of such capacity for the storage of water for irrigation for the benefit of such organizations as though that capacity had a storage right of identical priority with that held for Palisades Dam and Reservoir.

Protection of Water Rights

35. In case any dispute arises as to the character, extent, priority or validity of any of the storage rights held in the name of the United States for the benefit of the Company in connection with its rights under this contract, the United States may, independently of the Company, bring and prosecute judicial proceedings for the determination of such dispute and take all other measures necessary toward the defense and protection of its water rights, and such proceedings may be brought and prosecuted by the Company.

Refusal to Deliver Water in Case of Default

36. No water available to the Company under this contract shall be delivered to or for the Company if the Company is in arrears in the advance payment of operation and maintenance charges owed to the United States, if any, or more than twelve (12) months in arrears in the payment of construction charge obligation instalments, or more than twelve (12) months in arrears in the payment of any other amount owed to the United States under this contract. The Company shall refuse to deliver water to lands or parties who are in arrears in the advance payment of operation and maintenance charges due from such lands or parties to the United States or to the Company, or to lands or parties who are in arrears more than twelve (12) months in the payment of amounts due from such lands or parties to the United States or the Company to the United States under this contract. The provisions of this article are not exclusive and shall not in any manner prevent the United States from exercising any other remedy given by this contract or by law to enforce the collection of any payments due under the terms of this contract.

Levies and Assessments by Company; All Benefits
Conditioned Upon Payment; Lien to Secure Obligations

37. (a) The Company shall cause to be levied and collected all necessary assessments and charges against its members and stockholders and will use all the authority and resources of the Company (including,

without limitation by reason of this enumeration, its power to create liens and to withhold the delivery of water) to meet the obligations of the Company to the United States under this contract.

(b) Should the Company fail to levy the assessments and other charges against any land or the owners thereof as required by this contract, or, having levied, should the Company be prevented from collecting such assessments or other charges by any judicial proceedings or otherwise fail to collect them, such land and owners shall not be entitled to receive water made available under this contract and the Company, except as otherwise ordered by a court of competent jurisdiction, shall not deliver such water to such lands or the owners thereof unless and until arrangements for its delivery satisfactory to the Secretary have been made.

(c) All construction charge obligations to the United States assumed by the Company under this contract shall be and remain a lien on the Company's storage rights in the reservoir system as defined in this contract until paid or otherwise satisfied. Whenever the Company is in default in the payment of any instalment of such charges, the Secretary may declare the entire construction obligation due and the lien therefor may be foreclosed in the manner provided by law for the foreclosure of a mortgage.

Lands for Which Water is Furnished:
Limitations on Area

38. Pursuant to the provisions of the Federal Reclamation Laws, water made available to the Company from space in the reservoir

system for which the Company is obligated to the United States for construction charges under the terms of this contract shall not be delivered to more than one hundred sixty (160) irrigable acres in the ownership of any one person or other entity nor more than three hundred twenty (320) irrigable acres held by a husband and wife as community property, except that, if irrigable lands in excess thereof have been acquired by foreclosure or other process of law, by conveyance in satisfaction of mortgages, by inheritance or devise, water therefor may be furnished temporarily for a period not to exceed two (2) years from the effective date of such acquisition and except that delivery may be made to lands held in excess of this limitation if the excess lands are covered by a recordable contract made in accordance with the provisions of section 46 of the Act of May 25, 1926 (44 Stat. 649). These limitations shall cease to operate when the construction charge obligation under this contract has been paid in full. It shall cease also as to any excess lands in any one ownership when the construction charge obligation hereunder allocable to such land has been paid in full to the United States.

Limitation on Service to New Lands

39. The additional stored water made available to the Company under this contract shall not be delivered to lands which have not heretofore been irrigated (so-called new lands), except pursuant to arrangements made with the Secretary to govern the sale price of such new lands during the first five (5) years that water is made available

thereto under this contract. This limitation shall not apply, however, to new lands which are within the outer boundaries of an ownership heretofore entitled to the delivery of water through the Company's canal system, nor to other new lands to be served by the Company if the total irrigable area of these other new lands to be provided irrigation service within five (5) years after the date when the first Palisades construction charge instalment becomes due under the provisions of article 14 does not exceed 1,500 acres; nor to lands which, by transfer or otherwise, have an independent right to water from the Snake River, which right is intended to be supplemented by water made available under this contract; nor to lands as to which the construction charge obligation has been paid as provided in article 38.

Termination or Modification of Excess
Land Provisions

40. (a) In the event there is a repeal of the so-called excess land provisions of the Federal Reclamation Laws, articles 38 and 39 of this contract will no longer be of any force or effect, and, in the event these provisions are amended in material respects, the United States will, at the request of the Company, negotiate amendments of these articles in order to conform them to the excess land provisions of the law as so amended.

(b) Articles 38 and 39 will no longer be of force or effect if there is a determination by a court of final jurisdiction, binding

on all necessary parties, declaring the provisions of these articles to be of no force or effect.

(c) For the purposes of this article, the provisions of articles 38 and 39 are hereby agreed to be severable from the other provisions of this contract.

Penalty for Delinquency in Payment

41. Every instalment or charge required to be paid to the United States under this contract which shall remain unpaid after it has become due and payable shall bear interest at the rate of one-half per cent ($1/2\%$) per month from the date of delinquency. The Company shall impose, on delinquencies in the payment of assessments, other charges levied by it to meet its obligations under this contract, such penalties as it is authorized to impose under the laws of the State of Idaho.

Advisory Committee

42. (a) In its operation and maintenance of the various dams and reservoirs of the reservoir system, the United States, acting through the Regional Director of the Bureau of Reclamation or his designee or such other officer as may be designated in writing by the Secretary, shall consult from time to time with the Advisory Committee on the various matters specifically requiring consultation under the terms of this contract and on such other matters as will have a substantial bearing on the determination of the amount of stored water to be available in the various reservoirs and on the costs of

operation and maintenance of those reservoirs which are required to be borne by the space allocated to irrigation storage. The representative of the United States will meet with the Advisory Committee from time to time, but not less often than two times each year beginning with the calendar year 1953, at such dates and places as may be fixed by the Advisory Committee.

(b) Informal memoranda concerning working arrangements for the carrying out of the provisions of this article may be entered into from time to time between the Regional Director or other designated representative of the Secretary and the Advisory Committee.

(c) Beginning January 1, 1953, the Advisory Committee is agreed to be the Committee of Nine, as that committee may be constituted from time to time. The Committee of Nine shall continue to function as the Advisory Committee under this contract until a different representative body has been designated by a vote of the majority of the water users voting at any regular annual meeting of the water users of District No. 36 held as provided by law. Further designations of bodies to serve as the Advisory Committee may be made from time to time by this same election process.

Ratification of Contract

43. The execution of this contract shall be authorized or ratified by the qualified stockholders of the Company at an election held for that purpose in accordance with the controlling provisions of law. The Company, after the election and upon the execution of this contract,

shall promptly furnish to the United States certified copies of all documents required to establish the validity of the election and of the related actions of the Company's officers in executing the contract.

Changes in Company's Organization

44. While this contract is in effect, no changes shall be made as to the lands to which the stock of the Company is appurtenant or as to the Company's organization by partial or total consolidation or merger with another company or by proceedings to dissolve or otherwise, except with the consent of the Secretary evidenced in writing.

Rules and Regulations

45. The Secretary reserves the right, after consultation with the Advisory Committee, to make such rules and regulations consistent with the provisions of this contract, as are proper and necessary to carry out its true intent and meaning, and as are proper and necessary to cover any details of the administration or interpretation of the contract which are not covered by its express provisions. The Company shall observe such rules and regulations.

Representative of the Secretary

46. Where this contract uses the term "Secretary", this shall be deemed to include in all cases the Under Secretary or any Assistant Secretary or other officer of the Department of the Interior of equal authority. Where this contract authorizes action by the Secretary, such action may also be taken for or on behalf of the Secretary by any representative duly authorized therefor in writing.

Notices

47. Any notice, demand or request required or authorized by this contract shall be deemed properly given, except where otherwise herein specifically provided, if mailed, postage prepaid, to the Project Superintendent (the present "project officer"), Bureau of Reclamation, Burley, Idaho, on behalf of the United States, and to the Secretary, Aberdeen-Springfield Canal Company, Aberdeen, Idaho, on behalf of the Company. The designation of the person to be notified or the address of such person may be changed at any time by similar notice.

Discrimination Against Employees or Applicants For Employment Prohibited

48. The Company shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and shall require an identical provision to be included in contracts relating to the performance of this contract. This provision, however, does not refer to, extend to, or cover the activities of the Company which are not related to or involved in the performance of this contract.

Contingent on Appropriations or Allotment of Funds

49. The expenditure of any money or the performance of any work by the United States herein provided for, which may require appropriations of money by the Congress or the allotment of Federal funds, shall be contingent on such appropriations or allotments being made. The failure of the Congress to appropriate funds, or the failure of any

allotment of funds, shall not, however, relieve the Company from any obligations theretofore accrued under this contract, nor give the Company the right to terminate this contract as to any of its executory features pending the appropriation or allotment of such funds. No liability shall accrue against the United States in case such funds are not so appropriated or allotted.

Assignments Prohibited;
Successors and Assigns Obligated

50. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract, or any part thereof, or interest therein, shall be valid until approved by the Secretary.

Officials Not to Benefit

51. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

THE UNITED STATES OF AMERICA

By /s/ Vernon D. Northrop
Under Secretary of the Interior

(SEAL)

Attest:

ABERDERN-SPRINGFIELD CANAL COMPANY

/s/ Elmer Isaak
Secretary

By /s/ H. L. Lowe
President

STATE OF IDAHO)
 : ss.
County of Bingham)

On this 22nd day of October 1952
before me personally appeared H. L. Lowe
and Elmer Isaak to me
known to be, respectively, the President and the Secretary of
Aberdeen-Springfield Canal Company, the corpora-
tion that executed the within and foregoing instrument. They
acknowledged said instrument to be the free and voluntary act
and deed of said corporation, for the uses and purposes therein
mentioned; and on oath stated that they were authorized to
execute said instrument and that the seal affixed is the seal
of said corporation.

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

/s/ Alden L. Toews
Notary Public in and for the
State of Idaho
Residing at Aberdeen, Idaho

(SEAL)

My commission expires
March 12, 1955

DISTRICT OF COLUMBIA : ss.

On this 15th day of December, 1952
before me personally appeared Vernon D. Northrop to
me known to be the official of The United States of America
described in the foregoing instrument. He acknowledged that
he executed the said instrument in the capacity therein
stated as the free and voluntary act and deed of the United
States for the uses and purposes therein mentioned; and on
oath stated that he was authorized to execute said instru-
ment.

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

/s/ Harold L. Byrd
Notary Public in and for the
District of Columbia

(SEAL)

My commission expires
May 14, 1957

The Following Exhibits Are
Part of This Contract

Document entitled "Criteria and Method for Determination of
Certain Minidoka Powerplant Production Losses From
Restrictions on Use of Water Rights"

Exhibit A entitled "Palisades Project - Operating Plan for
Palisades Reservoir as set Forth in the Appendixes
of House Document No. 720, 81st Congress"
