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DEPARTMENT OF
WATER RESOURCES

Attorneys for A&B Irrigation District, Burley Irrigation District,
Milner Irrigation District, North Side Canal Company, and
Twin Falls Canal Company

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

In Re SRBA	)	
	)	Subcase Nos. 1-217, 1-218, 1-4024,
	)	and 1-4025 (Minidoka Power Rights)
Case No. 39576	)	
	)	Subcase Nos. 1-2068 and 1-4054
	)	(Palisades Power Rights)
	)	
	)	AFFIDAVIT OF RANDY
	)	BINGHAM
_____	)	
STATE OF IDAHO	)	
	) ss.	
County of Cassia	)	

RANDY BINGHAM, being first duly sworn upon oath, deposes and hereby states as follows:

1. I am over the age of 18 and state the following based upon my own personal knowledge.
2. I am the Manager of the Burley Irrigation District (BID), one of the objectors in the above-referenced subcases. I have been the Manager at BID since January 1, 1990. As

manager I am responsible for the storage, regulation, and distribution of BID's irrigation water supply to its landowners. As part of this duty I am in regular contact with the Watermaster for Water District 01 and staff for the U.S. Bureau of Reclamation ("Reclamation"). I am responsible for operating and maintaining BID's irrigation facilities and equipment. I prepare an annual budget and assist the Secretary and Treasurer in maintaining BID's accounts and records. Finally, I direct the activities of BID's operation and maintenance staff by directing the day-to-day operations of BID.

3. Burley Irrigation District is an irrigation district previously organized by landowners in Cassia County for the purpose of securing water from the United States Bureau of Reclamation's (Reclamation) Minidoka Project, as well as operating and maintaining the district's delivery system. Reclamation constructed the facilities of the Minidoka Project which includes Jackson Dam and Minidoka Dam. Reclamation also constructed the Minidoka Project South Side Canal ("Main Canal"), the pumping plants, and the main canals and laterals that deliver water to lands within the Burley Irrigation District in the early 1900s.

4. Power is provided by Reclamation as authorized in 1904 and was reconfirmed by Congress in 1998 (Public Law 105-351) when Reclamation transferred title to certain facilities to BID. *See Exhibit A.* Under Public Law 105-351 (Section 1(d)), Reclamation is required to "continue to provide Burley with project reserved power from the Minidoka Reclamation Power Plant, Palisades Reclamation Power Plant, Black Canyon Reclamation Power Plant, and Anderson Ranch Reclamation Power Plant in accordance with the terms of the existing contracts, including any renewals thereof as provided in such contracts". *See id.* Because BID must pump water from its Main Canal through a series of three lifts, or pumping plants, in order to deliver water to all lands within the district, BID requires a source of electric power which is why

Reclamation constructed the power plant at Minidoka Dam in 1908 and 1909. BID also uses power to pump water from eight drain pumps and nine shallow sump wells throughout the district. Reclamation reserves power for the Minidoka Project from the southern Idaho power pool consisting of power plants constructed at various facilities in southern Idaho, including Minidoka Dam.

5. Reclamation currently provides power to BID pursuant to the Contract for Electric Service to Burley Irrigation District (Contract No. 0-07-10-P0036). Attached to my affidavit as **Exhibit B** are excerpts from the contract. This contract was entered into on April 13, 2004. The contract states that “electric service will be furnished to the delivery point described here from power and energy generated at the Minidoka power plant or, if sufficient power and energy are not available from that source, any deficiency will be supplied from other facilities of the United States . . .” *See Ex. B, ¶ 8(a)*. The schedule of rates is set out pursuant to Rate Schedule PN-P12 and the terms of the contract. *See Ex. B, ¶ 9*. The rates charged to BID and other reclamation projects are based on the cost of production from all interconnected plants.

6. After the formation of the Burley Irrigation District, it entered into a repayment contract on behalf of landowners within the district with the United States Bureau of Reclamation on December 5, 1924. Later, BID entered into another contract with Reclamation on December 18, 1952 (Contract No. 14-06-W-48) “Concerning Storage Capacity in American Falls and Palisades Reservoirs, and Related Matters”. The contract is commonly referred to as BID’s “Palisades Contract”. Excerpts of this contract are attached as **Exhibit C** to my affidavit.

7. Under Article 20 of BID’s Palisades Contract, it is the stated objective of the United States in the operation of the Minidoka powerplant to curtail the release of additional water from American Falls Reservoir for power production at the Minidoka powerplant during

the storage season of any year whenever operation of that powerplant to the full extent of its respective water rights for power production would result in "loss of irrigation water otherwise storable in the reservoir system." See **Ex. C**. To offset the losses in power production under this Article, the United States will make replacement by the delivery of power and energy into the Minidoka power system at the Minidoka powerplant. Payment for this replacement power and energy must be made by all contractors having reservoir rights benefiting from the water savings. The "power loss" calculation and payment is important to BID in that it offsets Reclamation's power costs due to the curtailment of the winter operations at Minidoka power plant. The annual replacement requirement for each year shall be the average annual replacement over the last 20 year period.

8. It is my understanding that Reclamation entered into similar contracts with other spaceholders and districts in the Minidoka Project. It is also my understanding that these contracts were confirmed in the *Eagle Decree* case and that the provision regarding operations of the Minidoka and Palisades power plants were specifically included as Exhibit E to that decree.

9. To my knowledge there are no other Articles in the BID Palisades Contract or any other contract which authorizes the United States to subordinate its power water rights to any other water rights or for any other purpose other than storage for irrigation water as provided in the contract. The cost for reserved power that was reserved for BID, and other projects, is based upon the cost of production of the power. When annual production is reduced as a result of reduced water availability, the cost of production increases and the costs paid by BID and others for power used increases as well.

10. Subordination of the junior power rights at Minidoka Dam (1-4024 and 1-4025) and Palisades Dam (1-4054) to all other beneficial uses, present or future (except for junior

power rights) will reduce the water available for power production at these power plants. For Reclamation to subordinate its power rights in these subcases it is likely that the subordination would result in power losses that are not recoverable, resulting in greater power rates for BID and other reclamation projects in southern Idaho.

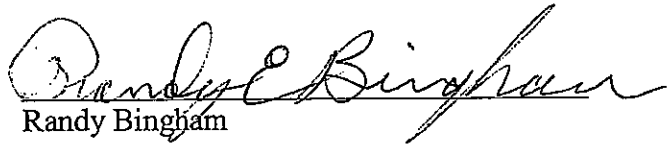
11. Burley Irrigation District provides water to approximately 47,640 acres within the district. Of that total, about 47,000 acres are dependent upon one or more of BID's three pumping plants that the district operates for the delivery of water. Power costs incurred by BID to operate these pumping plants and other facilities have increased over the years. I have prepared and attached a spreadsheet to this affidavit, compiled from records from the district, that shows power costs for BID have increased from \$124,328.00 in 1985 to \$706,241 in 2008. *See Exhibit D.* The cost per Kwh has risen from 5.10 mills in 1985 to 22.80 mills in 2008.

12. Any reduction in power production at any of the integrated power plants at Reclamation's facilities, including the Minidoka power plant, is likely to have a significant impact on the cost of power to BID, which will force BID to pay more in annual operation and maintenance expenses. In turn, any increased costs will be paid by BID's landowners and therefore will negatively affect their operations.

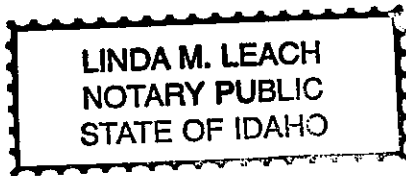
13. BID has never agreed with Reclamation's proposed subordination of the water rights for power production at Minidoka Dam that are not set forth in BID's Palisades Contract or in the *Eagle Decree*. BID has also never agreed to and is opposed to the remark proposed by the State of Idaho and Reclamation in their motions for summary judgment filed in these subcases.

Further you affiant sayeth naught.

DATED this 28 day of October 2009.


Randy Bingham

SUBSCRIBED AND SWORN to before me this 28th day of October 2009.



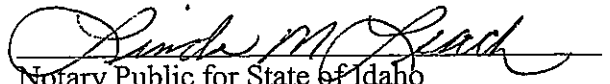

Notary Public for State of Idaho
Residing at Burley, Idaho.
Commission Expires: 9-24-2010

Exhibit A

Westlaw.

PL 105-351, 1998 S 538

PL 105-351, November 3, 1998, 112 Stat 3219

(Cite as: 112 Stat 3219)

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UNITED STATES PUBLIC LAWS
105th Congress - Second Session
Convening January 27, 1998

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Additions and Deletions are not identified in this database.
 Vetoed provisions within tabular material are not displayed.

PL 105-351 (S 538)

November 3, 1998

BURLEY IRRIGATION DISTRICT--CONVEYANCE OF MINIDOKA PROJECT

An Act to authorize the Secretary of the Interior to convey certain facilities of the Minidoka project to the Burley Irrigation District, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States
 of America in Congress assembled,

SECTION 1. CONVEYANCE OF FACILITIES.

(a) **DEFINITIONS.**--In this section:

(1) **BURLEY.**--The term "Burley" means the Burley Irrigation District, an irrigation district organized under the law of the State of Idaho.

(2) **DIVISION.**--The term "Division" means the Southside Pumping Division of the Minidoka project, Idaho.

(3) **SECRETARY.**--The term "Secretary" means the Secretary of the Interior.

(b) **CONVEYANCE.**--

(1) **IN GENERAL.**--The Secretary shall, without consideration or compensation except as provided in this section, convey to Burley, by quitclaim deed or patent, all right, title, and interest of the United States in and to acquired lands, easements, and rights-of-way of or in connection with the Division, together with the pumping plants, canals, drains, laterals, roads, pumps, checks, headgates, transformers, pumping plant substations, buildings, transmission lines, and other improvements or appurtenances to the land or used for the delivery of water from the headworks (but not the headworks themselves) of the Southside Canal at the Minidoka Dam and reservoir to land in Burley, including all facilities used in conjunction with the Division (including the electric transmission lines used to transmit electric power for the operation of the pumping facilities of the Division and related purposes for which the allocable construction costs have been fully repaid by Burley).

(2) **COSTS.**--The first \$80,000 in administrative costs of transfer of title and related activities shall be paid in equal shares by the United States and Burley, and any additional amount of administrative costs shall be paid by the United States.

(c) **WATER RIGHTS.**--

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PL 105-351, 1998 S 538
 PL 105-351, November 3, 1998, 112 Stat 3219
 (Cite as: 112 Stat 3219)

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(1) TRANSFER.--(A) Subject to subparagraphs (B) and (C), the Secretary shall transfer to Burley, through an agreement among Burley, the Minidoka Irrigation district, and the Secretary, in accordance with and subject to the law of the State of Idaho, all natural flow, waste, seepage, return flow, and groundwater rights held in the name of the United States--

*3220 (i) for the benefit of the Minidoka Project or specifically for the Burley Irrigation District;

(ii) that are for use on lands within the Burley Irrigation District; and

(iii) which are set forth in contracts between the United States and Burley or in the decree of June 20, 1913 of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Twin Falls, in the case of Twin Falls Canal Company v. Charles N. Foster, et al., and commonly referred to as the "Foster decree".

(B) Any rights that are presently held for the benefit of lands within both the Minidoka Irrigation District and the Burley Irrigation District shall be allotted in such manner so as to neither enlarge nor diminish the respective rights of either district in such water rights as described in contracts between Burley and the United States.

(C) The transfer of water rights in accordance with this paragraph shall not impair the integrated operation of the Minidoka Project, affect any other adjudicated rights, or result in any adverse impact on any other project water user.

(2) ALLOCATION OF STORAGE SPACE.--The Secretary shall provide an allocation to Burley of storage space in Minidoka Reservoir, American Falls Reservoir, and Palisades Reservoir, as described in Burley Contract Nos. 14-06-100-2455 and 14-06-W-48, subject to the obligation of Burley to continue to assume and satisfy its allocable costs of operation and maintenance associated with the storage facilities operated by the Bureau of Reclamation.

(d) PROJECT RESERVED POWER.--The Secretary shall continue to provide Burley with project reserved power from the Minidoka Reclamation Power Plant, Palisades Reclamation Power Plant, Black Canyon Reclamation Power Plant, and Anderson Ranch Reclamation Power Plant in accordance with the terms of the existing contracts, including any renewals thereof as provided in such contracts.

(e) SAVINGS.--

(1) Nothing in this Act or any transfer pursuant thereto shall affect the right of Minidoka Irrigation District to the joint use of the gravity portion of the Southside Canal, subject to compliance by the Minidoka Irrigation District with the terms and conditions of a contract between Burley and Minidoka Irrigation District, and any amendments or changes made by agreement of the irrigation districts.

(2) Nothing in this Act shall affect the rights of any person or entity except as may be specifically provided herein.

(f) LIABILITY.--Effective on the date of conveyance of the project facilities, described in section (1)(b)(1), the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the conveyed facilities, except for damages caused by acts of negligence committed by the United States or by its employees, agents, or contractors prior to the date of conveyance. Nothing in this section shall be deemed to increase the liability of the United States beyond that currently provided in the Federal Tort Claims Act (28 U.S.C. 2671 et seq.).

PL 105-351, 1998 S 538
PL 105-351, November 3, 1998, 112 Stat 3219
(Cite as: 112 Stat 3219)

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(g) COMPLETION OF CONVEYANCE.--

***3221 (1) IN GENERAL.**--The Secretary shall complete the conveyance under subsection (b) (including such action as may be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)) not later than 2 years after the date of enactment of this Act.

(2) REPORT.--The Secretary shall provide a report to the Committee on Resources of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate within eighteen months from the date of enactment of this Act on the status of the transfer, any obstacles to completion of the transfer as provided in this section, and the anticipated date for such transfer.

Approved November 3, 1998.

PL 105-351, 1998 S 538

END OF DOCUMENT

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Exhibit B

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Snake River Area Office, Idaho

CONTRACT FOR ELECTRIC SERVICE TO
BURLEY IRRIGATION DISTRICT

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Snake River Area Office, Idaho

CONTRACT FOR ELECTRIC SERVICE TO
BURLEY IRRIGATION DISTRICT

1. THIS CONTRACT, made this 13th day of April, 2004, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Federal Reclamation Laws, between the UNITED STATES OF AMERICA, hereinafter called the United States, represented by the officer executing this agreement, hereinafter called the Contracting Officer and the BURLEY IRRIGATION DISTRICT, an irrigation district organized and existing under and by virtue of the laws of the State of Idaho, its successors and assigns, hereinafter called the Contractor:

WITNESSETH, THAT:

2. WHEREAS, the United States through the Bureau of Reclamation, Department of the Interior, has been furnishing electric service to the Contractor under Contract No. 14-06-100-2455, (Repayment Contract) dated June 6, 1962, as amended, the power service portion of which expired by its terms on December 31, 2000, and

3. WHEREAS, the Repayment Contract provides through Article 16 (Power Supply for District Operations) that after expiration of the

be delivered in amounts which the Contractor may from time to time require.

MEASUREMENT AND SCHEDULING OF ELECTRIC POWER AND ENERGY

8. (a) The power and energy delivered in any monthly billing period to the Contractor's delivery points listed in Exhibit A shall include increases in the meter readings to cover losses in transmission and or distribution system from the Minidoka power plant to the delivery point. The electric service will be furnished to the delivery point described here from power and energy generated at the Minidoka power plant or, if sufficient power and energy are not available from that source, any deficiency will be supplied from other facilities of the United States over the facilities of the Idaho Power Company under the terms and conditions provided in Service Agreement No. 156 for Network Integration Transmission Service (Service Agreement) between the United States and Idaho Power Company, or under said contract, as it may be amended or extended from time to time, or under the terms and conditions of any contract that may supersede or succeed said contract.

(b) The associated losses are quantities dependent on factors outside control of this contract. Any changes in the losses will be incorporated in the billing defined under Subarticle (a) of this article after notification to the Contractor.

(c) As part of the Service Agreement, the United States schedules with Idaho Power Company the available energy at the

Minidoka 138,000-Volt Substation. The electric service furnished under this contract has a direct impact on the available energy being scheduled.

(1) The Contractor shall schedule the energy usage, provided under this contract, with the Contracting Officer in the manner defined by the Contracting Officer for other reserved power customers also affected by the Service Agreement.

(2) Should the United States be assessed an energy imbalance charge due to a scheduling error at the Minidoka 138,000-Volt Substation, the Contractor shall be assessed for its appropriate share of any imbalance charges arising from the Contractor's scheduling error.

SCHEDULE OF RATES

9. (a) The Contractor shall pay for the electric service furnished in accordance with the provisions of Rate Schedule PN-P12, attached hereto and made a part hereof or such modification or replacement thereof as may apply.

(b) In addition to the charges payable under Subarticle (a) of this article, when the Contracting Officer utilizes transmission facilities other than its own in providing service under this contract, and costs are incurred by the Contracting Officer for the use of such facilities, the Contractor shall pay that portion of such costs, including transmission losses, incurred in the delivery of energy which is in excess of a one-mill per kilowatt-hour transmission

charge and five percent (5%) transmission losses. The transmission losses chargeable to the Contractor shall, for billing purposes, be added to the meter readings of the power and energy delivered to the Contractor. The Contractor shall have the opportunity to submit, and the Contracting Officer shall consider, evidence that the transmission charge or transmission losses are excessive or otherwise inappropriate.

BILLING AND PAYMENTS

10. Notwithstanding the provisions of Subarticle 7(a), payment of the Contractor's charges for power supply shall be made each calendar year on the basis of annual estimates by the Contracting Officer. The notice of these annual estimates shall contain a statement of the estimated cost of power to be incurred for the calendar year involved. This notice shall be furnished to the Contractor each year on or before February 1 in the calendar year for which the notice is to be issued, but when requested by the Contractor, a preliminary estimate shall be given at such earlier date as is agreed on in writing. The Contractor 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. Whenever in the opinion of the Contracting Officer funds so advanced will be inadequate to pay the actual costs being incurred for a power supply under this contract, he or she may give a supplemental power charge notice stating therein the amount of the additional funds required,

UNITED STATES
DEPARTMENT OF INTERIOR
BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION

Boise, Minidoka, and Palisades Projects, Idaho,
and Owyhee Project, Oregon
SCHEDULE OF RATES FOR WHOLESALE FIRM SEASONAL
IRRIGATION PUMPING SERVICE FOR FEDERAL PROJECTS

Effective:

January 1, 2002

Available:

In southern Idaho and southeastern Oregon

Applicable:

For use in the operation of irrigation and drainage pumping plants on irrigation projects in which title in whole or in part is vested in the United States, or which are otherwise entitled, for power service supplied within contract limits through one meter at one point of delivery.

Character and Conditions of Service:

Alternating current, 60-hertz, three phase, furnished at the point or points established by appropriate notice.

Monthly Rate:

DEMAND CHARGE: None

ENERGY CHARGE: 15.6 mills per kilowatt-hour for all energy used

Seasonal Minimum Bill:

\$4.00 per kilowatt of the maximum 30-minute integrated demand established during service months of each year specified in an appropriate notice.

Wheeling Charge:

If delivery is made over lines of others and costs are incurred therefor by the United States for the use of such facilities, the power user shall pay that portion of such costs which is in excess of one mill per kilowatthour wheeling charge, unless otherwise provided by appropriate notice.

Adjustments:

For transformer losses:

If delivery is made at the high-voltage side of the pumping plant substation but metered at the low-voltage side, the meter readings will be increased two percent to compensate for transformer losses unless otherwise provided by appropriate notice.

For transmission and distribution system losses:

If delivery is made over lines of others and energy losses therefor are incurred by the United States, the meter readings adjusted for transformer losses shall be increased to compensate for losses on such lines, and the power user shall pay for such losses unless otherwise provided by appropriate notice.

For power factor:

None. The pumping plant facilities will normally be required to maintain a power factor at the point of delivery between 95 per cent lagging and 95 per cent leading.

Direct Deliveries¹

Name of Plant	Location	Horsepower	System Voltage	Metered Voltage	Losses ²	Losses ³
1 st South Side Lift Station	910 G Canal Road	3860	36000	2400	1.02%	1.05%
2 nd South Side Lift Station	1035 E 00 S	3310	36000	2400	1.02%	1.05%
3 rd South Side Lift Station	1063 E 3 rd Lift Road	2000	36000	2400	1.02%	1.05%

Wheeling costs for Wheeled Deliveries below are to be compensated for by Burley Irrigation District in separate wheeling contract(s). Location by Cassia County road coordinates.

Wheeled Deliveries: United Electric

Name of Plant	Location	Horsepower	System Voltage	Metered Voltage	Losses ²	Losses ³
West Burley Substation						
Morgan	150 S 200 W Meter No. 407200	40	480		1.08%	1.036%
J-36	440 W 175 S Meter No. 409900	30	110 & 480		1.08%	1.036%
G-20	25 S 475 W Meter No. 403400	200	110 & 480		1.08%	1.036%
Unity Substation						
Office/Shop ⁴	246 E 100 S Meter No. 657800	25 kW	100 & 480		1.08%	1.036%
Almo Pump	175 E 200 S Meter No. 418800	10	220		1.08%	1.036%
Snip Drain	175 E 200 S Meter No. 425700	5	480		1.08%	1.036%
Luke	400 E 400 S Meter No. 440100	7.5	480		1.08%	1.036%
Crane	298 S 300 E Meter No. 441300	10	480		1.08%	1.036%
Clements	240 S 450 E Meter No. 442200	15	480		1.08%	1.036%
Lind	440 S 520 E Meter No. 439600	7.5	480		1.08%	1.036%
Jensen	450 E 375 S Meter No. 439600	15	480		1.08%	1.036%

Wheeled Deliveries: Southside Electric

Name of Plant	Location	Horsepower	System Voltage	Metered Voltage	Losses ²	Loss ³
Newcomb Substation						
Matthews	00 S 965 E Meter No. A1-025	20	480		1.083%	1.036%
Easthill Substation						
Darrington	315 S 745 E Meter No. A1-008	10	240		1.083%	1.036%
G-Marsh Creek	A1-001	10	240		1.083%	1.036%
Spring Creek	145 S 620 E Meter No. A1-014	30	480		1.083%	1.036%
Johnson	390 S 600 E Meter No. A1-019	15	480		1.083%	1.036%
View	375 S 600E Meter No. A1-018	20	480		1.083%	1.036%
Payne	550 E 450 S Meter No. A1-017	15	480		1.083%	1.036%

¹ The South Side Lift pumping stations are directly connected to federal transmission facilities and do not incur wheeling costs for use of those facilities.

² Transformer and or wheeling agent's system Losses.

³ Transmission Losses on the federal facilities.

⁴ Contract expires ten (10) years from date of signature Contract 0-07-10-P0036.

Exhibit C

Contract No. 14-06-W-48

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Reclamation

Minidoka and Palisades Projects
Idaho

Contract With
BURLEY IRRIGATION DISTRICT
Concerning Storage Capacity in American Falls and
Palisades Reservoirs, and Related Matters

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Contract No. 14-06-W-48

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Reclamation

Minidoka and Palisades Projects
Idaho

Contract With
BURLEY IRRIGATION DISTRICT
Concerning Storage Capacity in American Falls and
Palisades Reservoirs, and Related Matters

THIS CONTRACT, Made this 18th day of December 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 BURLEY IRRIGATION DISTRICT (hereinafter called the District), a corporation organized and existing under the laws of the State of Idaho and having its principal place of business at Burley, 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 District, 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

representative to be selected jointly by the Burley and Minidoka irrigation districts and the North Side Canal Company, Ltd., and the officer of the United States in charge of the Minidoka Project.

Relinquishment of Rights in Jackson Lake Reservoir

19. Effective as of October 1, 1952, the District hereby relinquishes all its rights to thirty-one and ninety-three hundredths per cent (31.93%) (139,780 acre-feet) of the capacity in Jackson Lake Reservoir below elevation 6752 as those rights were established by the allocation of costs to lands within the jurisdiction of the District and by the terms of the contract of March 15, 1926, but there shall be credited to the District's share of lower valley exchanged space an amount of water equal to the stored water remaining to the credit of the space hereby relinquished as of the effective date of relinquishment. This relinquishment is contingent on there being effective, on or before December 31, 1952, or such later date as may be agreed on, the exchanges described in article 17.

Winter Power Operation; Minidoka Powerplant

20. (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. IIR-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 and the District 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 (e) 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 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 attributable to those units. Payment for such power and energy losses shall be made, on the basis of an average annual replacement requirement, by all 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. The amount to be paid by the District annually shall be limited, however, to that apportionable under the provisions of (e) of this article to the District's rights in American Falls Reservoir under the provisions of article 6 and the District's rights in Palisades Reservoir under the provisions of article 12.

(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"^{3/}, 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 calculations 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 sub-article (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

3/ 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 article 15. 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.

(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 provisions for payment for the District'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, including the 18,162 acre-feet of space available to the District under the provisions of article 6, except that in lieu of the lower valley exchanged space there shall be included 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.

(g) In order to permit the operation of the Minidoka power system with a power supply undiminished by water savings operations under this article, the United States, as the operator of the Minidoka powerplant and of other interconnected powerplants operated under the Federal Reclamation Laws, will, to the extent authorized by law, make available to the Minidoka powerplant at rates established under law an amount of power and energy equivalent to that lost by reason of such water savings operations. In determining the net profits attributable to the first six units of the Minidoka powerplant which are, under the provisions of subsection I of section 4 of the Act of December 5, 1924 (43 Stat. 703), and under existing contracts with the District and others, to be credited to the lands of the South Side Pumping and Gravity divisions of the Minidoka Project, all payments made by the owners of storage rights in the reservoir system in pursuance of the apportionment of power replacement charges as provided in (e) of this article shall be accounted for as revenues attributable to those six units, and such payments will, for the period that the United States is obligated to curtail power operations as provided in (a) of this article, be accepted by the District, to the extent of its interest in the net profits attributable to the first six units, as full settlement for losses resulting from such curtailed operations.

Exhibit D

USBR Power use by Burley Irrigation District

Year	Pre Payment \$	Actual Annual \$ Cost	KW cost \$ / 1000	Annual KWH Used (End of Dec.)
2009 est	687201		22.8	21918299 End of August
2008	716265	706241.79	22.8	28088206
2007	636575	619779	19.34	28672205
2006	475398	563652	19.34	27044162
2005	606584	495615	19.34	24101925
2004	443189	469953	15.6	28142244
2003	457225	428361	15.6	27296323
2002	426147	457225	15.6	29309270
2001	401794	346728	12.7	28894067
2000	299084	382975	12.7	31904991
1999	320929	310411	12.7	25858413
1998	305373	324350	12.7	27013830
1997	371749	331900	12.7	27639766
1996	291384	343473	10.63	31037412
1995	335292	275351	10.63	27331668
1994	275981	309662	10.63	31160682
1993	317758	279233	10.63	28094934
1992	289348	311959	10.63	31393362
1991	325256	289246	10.63	29105916
1990	235668	226557	7.74	32150202
1989	245265	227577	7.74	32295312
1988	251479	236805	7.74	33605376
1987	216139	235008	7.74	33353454
1986	149393	133424	5.1	30273726
1985	128597	143571	5.1	32570622
1984	133994	124328	5.1	28198506
1983	129024			
1982	151945			
1981	150384			
1980	114883			
1979	125176			
1978	152087			
1977	67419			
1976	71445			
1975	97249			
1974	92602			
1973	83107			