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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
Case No. 39576**

)
) Subcase Nos. 1-217, 1-218, 1-4024,
) and 1-4025 (Minidoka Power Rights)

)
) Subcase Nos. 1-2068 and 1-4054
) (Palisades Power Rights)

)
) **AFFIDAVIT OF DAN TEMPLE**
)

STATE OF IDAHO)
) ss.
County of Minidoka)

DAN TEMPLE, 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 A&B Irrigation District (A&B), one of the objectors in the above-referenced subcases. I have been the Manager at A&B since 1997. I work directly for the A&B Board of Directors and prepare an annual budget and operate the project under their policies and guidance. I direct and supervise the district personnel in the day-to-day operation of

AFFIDAVIT OF DAN TEMPLE

the district and our primary mission is to operate and maintain the district facilities and deliver water to the landowners.

3. A&B Irrigation District is an irrigation district previously organized by landowners in Jerome and Minidoka Counties for the purpose of securing water from the United States Bureau of Reclamation (Reclamation) and to operate and maintain the district's water delivery facilities. The A&B project is also known as the Northside Pumping Division of the Minidoka Project.

4. From the books and records of A&B, I have acquired certain knowledge and an understanding of the history and development of the Northside Pumping Division of the Minidoka Project. The original Minidoka Project of the Bureau of Reclamation was constructed to provide water for the irrigation of withdrawn federal lands for the what is now known as the North Side Gravity Division of the Minidoka Project (Minidoka Irrigation District) and the South Side Pumping Division of the Minidoka Project (Burley Irrigation District), which Projects were developed in the early 1900's. Reclamation constructed the project facilities which included Jackson Dam and the Minidoka Dam and powerplant.

5. In 1908, after construction of the Minidoka Project had been commenced, federal lands lying north and west of the North Side Gravity Division of the Minidoka Project (Minidoka Irrigation District), located in Minidoka and Jerome Counties, were withdrawn from public entry when a preliminary study was made for the development of these federal lands under what was known as the "North Side Pumping Division" of the Minidoka Project. Additional studies were undertaken by the Bureau of Reclamation in 1917, but no land was developed under the North Side Pumping Division for reasons that mostly storage water was needed for the irrigation of these lands, that the development costs were greater than they were for other Project lands, there

was no immediate need for more lands for agricultural purposes, and additional water was needed for lands already developed as part of the Minidoka Project.

6. Between 1918 and 1921, detailed investigation for the possible development of the North Side Pumping Division was again undertaken by the Bureau of Reclamation. The 1918-1921 reports contemplated pumping water from Lake Walcott (Minidoka Dam and Reservoir) for these withdrawn lands with the primary source of water being water stored in a new reservoir on the Snake River authorized by Congress, named the American Falls Reservoir. However, after construction of the American Falls Reservoir, funds appropriated for the North Side Pumping Division of the Minidoka Project were transferred to the Gravity Extension Division of the Minidoka Project then being constructed, to provide water to the Gooding, Idaho area. At the same time a large portion of the water reserved in American Falls Dam was allocated to the Gravity Extension Division.

7. Studies and investigations continued in regard to the development of the North Side Pumping Division of the Minidoka Project, including eventual studies for authorization and construction of Palisades Reservoir. After reports were prepared for submission to Congress to obtain authorization for this Division of the Minidoka Project, the Commissioner of Reclamation filed his report and recommendation as House Document No. 721 with the 81st Congress, Second Session, to support Congressional authorization. The North Side Pumping Division of the Minidoka Project was approved on September 30, 1950 (65 Stat. 1083) by the United States Congress, for construction under the provisions of the Reclamation Act of 1902.

8. Following authorization, Reclamation proceeded to construct the facilities of the North Side Pumping Division of the Minidoka Project (A&B Project) which includes a pumping plant on the Snake River, a discharge line to the main canal, numerous laterals and relift pumps

to provide surface water to the district's landowners, as well as over 170 wells and their associated pumping equipment and additional laterals to provide groundwater to the district's landowners. The project construction began in the early 1950s and was completed in the 1960s. Reclamation turned over the operation and maintenance responsibilities to A&B on March 1, 1966.

9. A&B completely relies upon its pumping facilities (Snake River pumping plant and now 188 individual groundwater wells) to deliver water to all landowners within the district. Currently, A&B delivers surface water to about 17,000 acres and groundwater to approximately 64,000 acres. A&B cannot deliver any water without operating its pumping facility on the Snake River and its individual groundwater wells.

10. Because A&B must pump water in order to deliver water to all lands within the district, A&B requires a source of electric power which is provided by Reclamation pursuant to contract. It is my understanding that Reclamation reserves power for A&B (as well as other districts in the Minidoka Project) from the southern Idaho power pool consisting of power plants constructed at various facilities in southern Idaho, including Minidoka Dam.

11. After the formation of the district, A&B entered into a repayment contract ("A&B Contract") on behalf of landowners within the district with the United States Bureau of Reclamation on February 9, 1962 (later amended by Amendment No. 1 on May 6, 1987 and Amendment No. 2 on August 23, 1989). This contract is similar to other contracts entered into between Reclamation and other spaceholders known as the "Palisades Contracts". Excerpts of the A&B Contract are attached to this affidavit as **Exhibit A**.

12. Pursuant to Article 28 of the A&B Contract part of the power generated at the Palisades Dam hydropower plant is set aside in perpetuity for the benefit of A&B that is required

for the operation of A&B's pumping plant at the Snake River and its groundwater wells to deliver water to the district landowners. *See Ex. A at 45-46.* In addition, Reclamation has the right to provide power to A&B from other sources in lieu of all or any part of that so set aside. Importantly, Reclamation is obligated to provide A&B the power to operate the district's pumping facilities. The power is to be furnished to A&B at the "pumping plants or such other points as are agreed on between the United States and the District at rates per kilowatt-hour to govern for irrigation pumping on Federal reclamation projects as to power and energy from the Palisades powerplant and interconnected power plants as established from time to time by the Secretary pursuant to Federal Reclamation Laws." *See Ex. A at 45.*

13. It is my understanding that the Palisades hydropower plant and interconnected plants consist of the Palisades, Minidoka, Black Canyon, Anderson Ranch and the Boise Diversion powerplants. The rates charged to A&B and other reclamation projects are based on the cost of production from all interconnected plants. Under Article 19 of A&B's 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. A at 27.* However, to offset the losses in power production under this Article, the United States is required to make replacement power available by the delivery of power and energy from other reclamation powerplants into the Minidoka power system at the Minidoka powerplant. *See Ex. A at 29.* Payment for this replacement power and energy must be made by A&B and all other spaceholders in Palisades Reservoir, Island Park Reservoir and American Falls Reservoir that

benefit from the water savings or storage as a result of the curtailment. *See* Ex. A at 28-29. The annual replacement requirement, identified as "power loss", for each year is established as the average annual replacement over the preceding 20 year period. Therefore, although water is stored for irrigation purposes to the detriment of power generation at the Minidoka Dam powerplant during the winter months, Reclamation makes up for those losses pursuant to the contract. The A&B Contract, including this power loss provision referenced above, was also approved and confirmed it the *Eagle Decree*.

14. To my knowledge there are no other Articles in the A&B Contract which authorize 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 A&B, 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 A&B and others for power used increases as well.

15. Subordination of the junior power water 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 water rights in these cases it is likely that the subordination would result in power losses that are not recoverable, resulting in greater power rates for A&B and other reclamation projects in southern Idaho that rely upon reserved power provided by Reclamation.

16. As stated above, delivery of water to all acres within A&B is dependent upon power provided by Reclamation to operate the district's Snake River pumping plant and

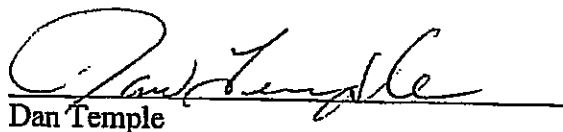
groundwater wells. Power costs incurred by A&B each year have increased over the years. Attached to my affidavit as **Exhibit B** is a spreadsheet I compiled from the records of A&B regarding annual power costs incurred by the district. The spreadsheet shows that the costs for Reclamation's reserved power have increased from \$237,616.00 in 1972 to \$2,317,108 in 2008. The cost per Kwh has risen from 2.35 mills in 1972 to 22.80 mills in 2008. *See Ex. B.* A&B also pays Reclamation for wheeling charges incurred by reason of Idaho Power transporting the Reclamation power to A&B through Idaho Power's power lines.

17. Any reduction in power production at any of the integrated power plants at Reclamation's facilities, including the Minidoka Dam hydropower plant, is likely to have a significant impact on the cost of power to A&B, which will force A&B to pay more in annual operation and maintenance expenses and will negatively impact the district's landowners. Since A&B is already paying Reclamation over \$2 million a year for power only, any increase in these costs stands to impact the district's landowners and A&B's ability to repay its contract obligations to Reclamation.

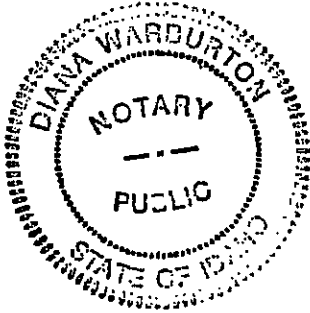
18. A&B has never agreed with Reclamation's proposed subordination of the water rights for power production at Minidoka Dam that are not set forth in the A&B Contract. In addition, A&B has never agreed to and is opposed to the remark language being proposed by the State of Idaho and Reclamation in their motions for summary judgment filed in these subcases.

Further you affiant sayeth naught.

DATED this 29th day of October 2009.


Dan Temple

SUBSCRIBED AND SWORN to before me this 29th day of October 2009.



Diana Wardurton
Notary Public for State of Idaho
Residing at Rupert, Idaho.
Commission Expires: 3-26-14

Exhibit A

Draft 11/27/61

Contract No. 14-06-100-2358

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
North Side Pumping Division
Minidoka Project, Idaho

REPAYMENT CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND THE A & B IRRIGATION DISTRICT

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Contract No. 14-06-100-2368

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
North Side Pumping Division
Minidoka Project, Idaho

REPAYMENT CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND THE A & B IRRIGATION DISTRICT

THIS CONTRACT, Made this 9th day of February, 1962, by and between THE UNITED STATES OF AMERICA, hereinafter called the United States, acting through the Secretary of the Interior, and pursuant to the Act of Congress of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, including the Act of Congress approved September 30, 1950 (64 Stat. 1083), called collectively the Federal Reclamation Laws, and the A & B IRRIGATION DISTRICT, an irrigation district organized and existing under and by virtue of the laws of the State of Idaho, hereinafter referred to as the District,

WITNESSETH, THAT:

Explanatory Recitals

2. WHEREAS, under the authority of the Federal Reclamation Laws, the United States is constructing the irrigation project in the State of Idaho, known as the North Side Pumping Division, Minidoka Project; and

3. WHEREAS, the District, as the duly authorized representative of the water users, desires to enter into a contract to provide for repayment to the United States of the cost of constructing the project;

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

later delivery of water, by exchange or otherwise, to the upper valley entities entitled thereto.

Winter Power Operation; Minidoka Powerplant

19. (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 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 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 District 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:

(1) 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

PROVISIONS RELATING TO PROJECT POWER SUPPLY
ARTICLES 28 THROUGH 29

Power for Irrigation Pumping

28. (a) Out of the power and energy to be generated in the Palisades powerplant, there is hereby set aside in perpetuity for the benefit of the District that power and energy required for the operation of the pumping plants of the District to deliver water to the lands of the District (subject to the reservation of adequate capacity to the United States for operation of the Palisades Dam and powerplant), with the right in the United States to provide from other sources an amount of power and energy in lieu of all or any part of that so set aside. The power and energy so set aside or provided in lieu thereof will be furnished to the electric pumping plants or at such other points as are agreed on between the United States and the District at rates per kilowatt-hour to govern for irrigation pumping on Federal reclamation projects as to power and energy from the Palisades powerplant and interconnected plants as these are established from time to time by the Secretary pursuant to the Federal Reclamation Laws.

(b) The District may make arrangements other than herein provided for the purchase of power for irrigation pumping from sources other than the Palisades powerplant, but to the extent that power is procured from other sources there is hereby released from the block of Palisades power and energy set aside for the District an amount equivalent to that obtained by the District from other sources.

(c) While the United States is operating the project works the power charge shall be determined annually by the Secretary and included in the development period charge or in the costs of project operation and

maintenance, as appropriate. Beginning with the year in which the District operates and maintains the transferred works, payments for the District's power supply under this article shall be made each calendar year on the basis of annual estimates by the Secretary. Notice of these annual estimates, hereinafter referred to as the power charge notice, shall contain a statement of the estimated charge for power to be incurred for the calendar year involved. This power charge notice shall be furnished to the District on or before February 1 of the calendar year for which the notice is to be issued, but, when requested by the District, a preliminary estimate shall be made at such earlier date as is agreed on in writing. The District shall pay one-half of the amount stated in the notice on or before April 15 of the year for which it is issued, and one-half on or before the succeeding June 30, or such other dates as may be agreed on in writing. Whenever in the opinion of the Secretary payments so advanced will be inadequate to pay the actual cost being incurred for a power supply under this article, he may give a supplemental power charge notice stating therein the amount of the additional charges required and the District shall advance that additional amount on or before the date specified in the supplemental notice. If amounts advanced by the District under this article exceed the District's actual power charges under the provisions of this article for the year for which advanced, the surplus shall be credited on the power charges to become due from the District for succeeding years.

Exhibit B

Actual Power Costs					
Unit A & Unit B					
		USBR			
Year	O&M Assessment/Acre	Rate (mills)	Reserve Power	Wheeling	Total Reserve Power & Wheeling
2008	\$95.00	22.80	\$2,317,108.00	\$733,626.00	\$3,050,734.00
2007	\$63.00	19.34	\$1,983,997.00	\$695,581.00	\$2,679,578.00
2006	\$63.00	19.34	\$1,808,079.00	\$663,839.00	\$2,471,918.00
2005	\$64.00	19.34	\$1,562,638.00	\$584,980.00	\$2,147,618.00
2004	\$55.00	15.60	\$1,521,681.00	\$705,645.00	\$2,227,326.00
2003	\$54.00	15.60	\$1,500,162.00	\$736,823.00	\$2,236,985.00
2002	\$41.00	15.60	\$1,525,798.00	\$227,559.00	\$1,753,357.00
2001	\$36.00	12.70	\$1,312,599.00	\$237,058.00	\$1,549,657.00
2000	\$36.00	12.70	\$1,388,307.00	\$263,213.00	\$1,651,520.00
1999	\$36.00	12.70	\$1,199,178.00	\$229,353.00	\$1,428,531.00
1998	\$36.00	12.70	\$1,113,292.00	\$231,197.00	\$1,344,489.00
1997	\$36.00	12.70	\$1,205,380.00	\$198,076.00	\$1,403,456.00
1996	\$36.00	10.63	\$1,073,929.00	\$202,278.00	\$1,276,207.00
1995	\$36.00	10.63	\$942,005.00	\$279,170.00	\$1,221,175.00
1994	\$34.00	10.63	\$1,158,102.00	\$339,659.00	\$1,497,761.00
1993	\$35.00	10.63	\$995,477.00	\$296,704.00	\$1,292,181.00
1992	\$35.00	10.63	\$1,219,398.00	\$358,264.00	\$1,577,662.00
1991	\$37.00	10.63	\$1,034,597.00	\$306,044.00	\$1,340,641.00
1990	\$31.00	7.74	\$860,833.00	\$350,806.00	\$1,211,639.00
1989	\$29.00	7.74	\$786,427.00	\$234,193.00	\$1,020,620.00
1988	\$29.00	7.74	\$761,068.00	\$87,676.00	\$848,744.00
1987	\$29.00	7.74	\$778,485.00	\$90,105.00	\$868,590.00
1986	\$27.00	5.10	\$451,805.00	\$79,013.00	\$530,818.00
1985	\$27.00	5.100	\$473,173.00	\$83,038.00	\$556,211.00
1984	\$27.00	5.100	\$449,536.00	\$79,449.00	\$528,985.00
1983	\$26.00	5.100	\$440,658.00	\$77,188.00	\$517,846.00
1982	\$23.00	5.100	\$441,144.00	\$77,688.00	\$518,832.00
1981	\$22.00	5.100	\$509,443.00	\$89,155.00	\$598,598.00
1980	\$18.25	4.000	\$377,422.00	\$84,611.00	\$462,033.00
1979	\$16.25	3.20	\$338,706.00	\$95,175.00	\$433,881.00
1978	\$15.25	3.20	\$285,928.00	\$79,881.00	\$365,809.00
1977	\$14.50	3.20	\$329,842.00	\$92,889.00	\$422,731.00
1976	\$14.00	3.20	\$290,149.00	\$80,942.00	\$371,091.00
1975	\$10.00	2.70	\$244,326.00	\$81,264.00	\$325,590.00
1974	\$9.25	2.350	\$247,035.00	\$94,739.00	\$341,774.00
1973	\$9.25	2.350	\$229,352.00	\$87,984.00	\$317,336.00
1972	\$9.25	2.350	\$237,616.00	\$91,951.00	\$329,567.00
1971	Block 1-7 - \$9.25, Block 8 - \$11.00	2.350	\$222,608.00	\$77,067.00	\$299,675.00
1970	Block 1-7 - \$9.25, Block 8 - \$11.00	2.350	\$210,292.00	\$80,298.00	\$290,590.00
1969	Block 1-7 - \$9.25, Block 8 - \$11.00	2.350	\$247,024.00	\$94,889.00	\$341,913.00