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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*

**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 TRAVIS L. THOMPSON
	)	IN SUPPORT OF SWC OPPOSITION TO
	)	STATE'S AND UNITED STATES'
	)	MOTIONS FOR SUMMARY JUDGMENT
	)	

STATE OF IDAHO)
) ss.
County of Twin Falls)

TRAVIS L. THOMPSON, being first duly sworn upon oath, deposes and hereby states as follows:

1. I am an attorney representing A&B, BID, Milner, NSCC, and TFCC in the above-captioned matter. I am over the age of 18 and state the following based upon my own personal knowledge.

2. Attached hereto as **Exhibit A** are true and correct copies of excerpts of *A Historical Review of the Power Privilege at the Minidoka Irrigation Project, Idaho: 1909-1974* (Historical Research Associates, Inc., July 25, 2002).

3. Attached hereto as **Exhibit B** is a true and correct copy of the decree issued by the Twin Falls County District Court in *Twin Falls Canal Company v. Charles N. Foster, et al.* (commonly referred to as the *Foster Decree*).

4. Attached hereto as **Exhibit C** is a true and correct copy of excerpts of the complaint filed in the *Burley Irrigation District, et al. v. Henry Eagle* case (Twin Falls County Dist. Ct., 5th Jud. Dist.).

5. Attached hereto as **Exhibit D** is a true and correct copy of excerpts of the *Stipulation* entered by the Twin Falls County District Court in the *Burley Irrigation District, et al. v. Henry Eagle* case.

6. Attached hereto as **Exhibit E** is a true and correct copy of the *Findings of Fact and Conclusions of Law* entered by the Twin Falls County District Court in the *Burley Irrigation District, et al. v. Henry Eagle* case.

7. Attached hereto as **Exhibit F** is a true and correct copy of William Burpee's July 25, 1966 letter to John Rosholt.

8. Attached hereto as **Exhibit G** is a true and correct copy of William Burpee's November 28, 1966 letter to John Rosholt.

9. Attached hereto as **Exhibit H** is a true and correct copy of William Burpee's December 14, 1966 letter to John Rosholt.
10. Attached hereto as **Exhibit I** is a true and correct copy of Williams Burpee's September 6, 1967 letter to John Rosholt.
11. Attached hereto as **Exhibit J** is a true and correct copy of John Rosholt's July 9, 1968 letter to William Burpee.
12. Attached hereto as **Exhibit K** is a true and correct copy of the October 1, 1934 *Contract between United States and Idaho Power Company for conservation of Snake River water and furnishing transmission service.*
13. Attached hereto as **Exhibit L** is a true and correct copy of the June 15, 1923 *Contract Between the United States and the Idaho Power Company, Relative to Power Rights at American Falls, Idaho.*
14. Attached hereto as **Exhibit M** is a true and correct copy of the Disclaimer entered by the State of Idaho Attorney General's Office and Watermaster Henry Eagle in the *Aberdeen-Springfield Canal Co. et al. v. Eagle* (Idaho 7th Dist. Ct., July 9, 1968).
15. Attached hereto as **Exhibit N** is a true and correct copy of the *State of Idaho's Response in Opposition to the Idaho Powe Company's Motion to Designate Basin-Wide Issue, or Alternatively, to Consolidate Subcases on Common Issue* filed in subcase nos. 1-217 et al. on October 4, 2007.
16. Attached hereto as **Exhibit O** is a true and correct copy of the Judge Melanson's *Order Deconsolidating Subcase 00-92026 and Order of Recommitment to Special Masters* issued in consolidated subcase no. 00-92026 on July 1, 2008.

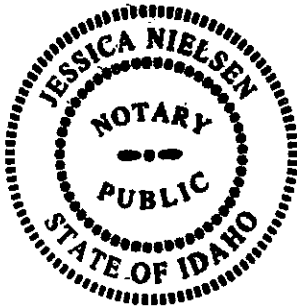
17. Attached hereto as **Exhibit P** is a true and correct copy of the Judge Melanson's *Order of Partial Decree for General Provision in Basin 31 Regarding Obstructions in Camas Creek and Tributaries* issued on February 18, 2004.

Further you affiant sayeth naught.

DATED this 3rd day of November, 2009.


Travis L. Thompson

SUBSCRIBED AND SWORN to before me this 3 day of November, 2009.



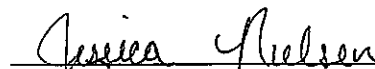

Notary Public for State of Idaho
Residing at Twin Falls, Idaho.
Commission Expires: 4/3/12

Exhibit A

**A Historical Review of the
Power Privilege at the Minidoka Irrigation Project,
Idaho:
1909 - 1974**

Prepared by

**Historical Research Associates, Inc.
Alan S. Newell, M.A., Principal Investigator
Matthew C. Godfrey, Ph.D., Project Historian**



**Prepared for
United States Attorney for the District of Idaho**

July 25, 2002

Influenced by these proclamations, the House voted down Madden's amendment, as well as other ones he proposed. But controversy over the bill continued, especially when Oscar Underwood of Alabama submitted an amendment stating that the Reclamation Service, as of July 1, 1915, would have to make investigations of the costs of all of its proposed projects that year, make the results public, and then request the necessary appropriations from Congress. Although western representatives believed that this amendment would cause unnecessary delays, it overwhelmingly passed the House by a vote of 178 to 49. The payment-extension bill elicited few other disagreements, and the House passed the entire bill on July 30.³⁵ On August 13, nearly six months after its introduction, the Reclamation Extension Act became law (38 Stat. 686).

The Establishment of the Minidoka Project

One of the first projects to develop under these reclamation statutes was the Minidoka Project on the Snake River in southern Idaho. The government had previously explored the possibilities of irrigation in that region in 1889 and 1890 when the U.S. Geological Survey undertook examinations. When the Reclamation Act passed, data about the area were readily available to the Reclamation Service and to those in Idaho who would coordinate the federal program. Based on these data, Secretary of the Interior Ethan A. Hitchcock withdrew from public entry the land that would become the Minidoka Project on November 17, 1902, and he authorized the construction of irrigation facilities on April 23, 1904.³⁶ The government planned on building two structures: Minidoka Dam, the main facility, and Jackson Lake Dam, a storage reservoir. Those settlers on the 120,000 acres immediately around the Minidoka Dam, constructed near the Minidoka rapids in the Snake, would get their water either through gravity distribution (for those on the north side) or through pumping (for those on the south side). Construction of these facilities began in 1904, and the canal and distributing systems were completed in 1907 (See map on following page). When the project began operating, it provided water to the towns of

³⁵ *Congressional Record*, 63d Cong., 2d sess., 1914, 51, pt. 13:13010-13012.

³⁶ U.S. Department of the Interior, *Water and Power Resources Service Project Data: 1981* (Denver: United States Government Printing Office, 1981), 643.

Heyburn, Paul, Acequia, and Rupert, which "represented the first irrigation water provided by the U.S. Reclamation Service."³⁷

But before settlers on the south side of the river could reap the benefits of reclamation, a power plant had to be developed to drive the pumping mechanism. In 1908 construction began on the Minidoka plant, and in 1909 the first units were put into service, thereby providing water to south side settlers.³⁸ The pumping facility did not require all of the power produced by the plant, and the excess power was marketed to the towns of Rupert, Heyburn, and Burley beginning in 1910, providing them with a cheap source of electricity.³⁹ Indeed, the Reclamation Service assured project settlers that power rates would be "as low as is possible,"⁴⁰ and the plant's production became an important part of the Minidoka Project.

As the project and power plant continued to develop, water users on the north side of the river decided to organize themselves into the Minidoka Water Users' Association. Mediating between their constituents and the Reclamation Service, this association incited "considerable agitation . . . which resulted in the betterment of conditions" on the project. But in 1913, irrigators decided that they needed a "stronger organization."⁴¹ Pursuant to Idaho state law, they thus formed the Minidoka Irrigation District (MID) in July 1913, an organization representing water users on the 78,000 acres known as the Gravity Unit.⁴² The settlers on the South Side

³⁷ Quotation in Leonard J. Arrington, "Irrigation in the Snake River Valley: An Historical Overview," *Idaho Yesterdays* 30 (Spring/Summer 1986): 6; U.S. Department of the Interior, *Water and Power Resources Service Project Data*, 643; Coate, "Federal-Local Relationships on the Boise and Minidoka Projects, 1904-1926," 2; Mark Fiege, *Irrigated Eden: The Making of An Agricultural Landscape in the American West* (Seattle: University of Washington Press, 1999), 95; House of Representatives Committee on Irrigation of Arid Lands, *Hearings Before the Committee on Irrigation of Arid Lands of the House of Representatives Relating to Projects for the Irrigation of Arid Lands Under the National Irrigation Act and the Work of the Division of Irrigation Investigations of the Agricultural Department in Connection with Irrigation of Arid Lands*, 58th Cong., 3d sess., 45-48.

³⁸ *Wilbur v. Burley Irrigation District*, 58 F.(2d) 871. See also P. M. Fogg, "A History of the Minidoka Project, Idaho, to 1912 Inclusive," 53-56, Box 1, Minidoka Irrigation District Files, United States Attorney's Office, District of Idaho, Boise, Idaho [USAO].

³⁹ "Prospective Commercial Load Growth and Power System Requirements: Minidoka Project," R. O. Draft of July 20, 1949, Box 21, Minidoka Irrigation District Files, USAO.

⁴⁰ Quotation in "Minidoka Project, July 28, 1909, Meeting with the Committee," 3, Box 1617, General File, Office of the Secretary of the Interior Central Classified Files [CCF], 1907-1936, Entry 749, Record Group [RG] 48, National Archives and Records Administration II, College Park, Maryland [NARA II]; see also "Minidoka Project, Rupert, Idaho, July 27, 1909, Meeting of the Secretary with Committee of Water Users," 4-5, *Ibid*.

⁴¹ N. K. Jensen, "Minidoka Irrigation District," 329, in "Annual Project History, Report of Construction and Operation and Maintenance, Volume XI, Year of 1917," Box 1, Minidoka Irrigation District Files, USAO.

⁴² Hyatt and Redford, "Brief," n.d., Box 22, File 832, Minidoka Irrigation District Files, USAO. For general information on Idaho irrigation districts, see William F. Ringert, "Irrigation Districts: Purpose, History, Funding, and Problems," *Idaho Yesterdays* 30 (Spring/Summer 1986): 64-70.

V. Minidoka Power Problems, 1930s-1940s

As the federal government formulated a new power policy in the 1930s, the Minidoka Project faced some energy problems of its own. Demand for power increased on the project, but the plant could not keep up, in part because of droughts that depleted the Snake River, and in part because of pumping requirements. These energy shortages led the Bureau of Reclamation to enter into contracts with both the MID and the Idaho Power Company to furnish more power to the project, forcing the BID to file a lawsuit against the Interior Department. As the MID and BID continued to fight over profit allocation, and as the power situation became more complicated on the Minidoka Project due to imported electricity, the government decided in the 1940s to negotiate with both districts for their power rights. Although no settlement was reached, the foundation had been laid for further acquisition negotiations and for the establishment of the BPA as the marketing authority for southern Idaho.

The Minidoka Irrigation District's 1935 Contract

In the late 1920s and early 1930s, drought conditions reduced both the amount of water flowing to the Minidoka Project from the Snake River and water levels in the American Falls storage reservoir. The water shortages led to severe crop losses, especially in 1934, as not enough water was available in the late summer for irrigation. Part of the problem was that in the winter, operators released 225,000 acre-feet of water from the American Falls Reservoir in order to keep the Minidoka power plant and the Idaho Power Company's American Falls plant operating. This "waste of water [was] inimical to the imperative need for preservation of irrigation in the Snake River Valley."²¹⁹ In addition, during the irrigation season, pumps on the south side of the project demanded nearly all of the power, leaving little for the commercial power business. Since enterprises and consumers depended on a year-round secure power supply, the project's energy sales suffered. The secretary of the interior brought in power from outside sources to supplement the Minidoka plant during the irrigation season, but as water

²¹⁹ B. E. Stoutemyer, Memorandum for the Commissioner, March 12, 1940, 16, Box 759, File 320, BOR Project Correspondence Files, 1930-1945, Entry 7, RG 115, NARA-RMB. Stoutemyer was quoting from the district court's Findings of Fact in *Burley Irrigation District v Ickes*.

shortages worsened, "further measures of conservation became necessary both to fulfill irrigation requirements in the project . . . and to preserve the commercial business."²²⁰

Realizing the seriousness of the situation, the Bureau of Reclamation developed a way to supplement power on the Minidoka Project while also storing winter water for summer use. In the late 1920s and early 1930s the bureau discussed building a power plant at American Falls, but in the fall of 1933, the Idaho Power Company, which already had a plant in that location, submitted a different proposal. The corporation said that it "would waive its right to its reserved 255,000 acre-feet of the winter flow of [the] Snake River" and would provide the Minidoka Project with as much supplemental power as it needed if the government would abandon plans for the American Falls plant.²²¹ Throughout the first months of 1934 the bureau, the company, and project officials discussed this idea, and finally reached an agreement in the summer of 1934.

The parties agreed that the Idaho Power Company would shut down its American Falls plant in the winter, and then give the Minidoka Project as much as 4,000 kilowatts of firm power during the irrigation season. Throughout each winter, the company would also provide up to 10,000 kilowatts to supply the project's needs. This would allow the Minidoka plant to be idle during part of the winter, thereby preserving water for irrigation use. In exchange, the government promised the Idaho Power Company all of the surplus energy produced at the Black Canyon power plant on the Boise Project,²²² and agreed not to build its own generator at American Falls. On October 1, 1934, the company and the United States signed a contract providing for these features.²²³

²²⁰ *Burley Irrigation District v. Ickes* 116 F.2d 536. See also draft of "Findings of the Secretary of the Interior as to net profits from the Black Canyon and the Minidoka Power Plants, through sales of power on the Minidoka project and towns adjacent thereto, during the year 1935," December 9, 1935, Box 18, Power Credits File, Minidoka Irrigation District Files, USAO.

²²¹ Stoutemyer, District Counsel, to Commissioner of Reclamation, November 4, 1933, Box 760, File 320, BOR Project Correspondence Files, 1930-1945, Entry 7, RG 115, NARA-RMB.

²²² Stoutemyer had first suggested this exchange in April 1934. The bureau was already conducting a similar swap whereby it traded Black Canyon's winter output to the Idaho Power Company in exchange for transmission service. Stoutemyer to Commissioner of Reclamation, April 26, 1934, Box 760, File 320, BOR Project Correspondence Files, 1930-1945, Entry 7, RG 115, NARA-RMB.

²²³ "Contract Between United States and Idaho Power Company for conservation of Snake River water and furnishing transmission service," October 1, 1934, attachment to "Contract Dated Jan. 1, 1935 with Minidoka Irrigation District (Secure Collection of Required \$50,000 per year to apply on cost of Black Canyon Dam, Power Plant, and Deadwood Reservoir)," Box 729, File 222, BOR Project Correspondence Files, 1930-1945, Entry 7, RG

... continued on next page

Exhibit B

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

---0---

TWIN FALLS CANAL COMPANY,

Plaintiff.

vs.

CHARLES H. FOSTER, ET AL.

Defendants.

D E C R E E.

---0---

This cause having come on to be heard this 13th day of June 1913, upon the amended complaint of the plaintiff, the Twin Falls Canal Company; the answer and ~~and~~ cross-complaint of the Twin Falls North Side Land and Water Company, a Delaware corporation, and the North Side Canal Company, an Idaho corporation; the answer and cross-complaint, Asabel S. Abbott, Josie H. Acuff, and others claiming rights in the Snake River by reason of the Minidoka Reclamation Project of the United States (as filed by C. H. Lingenfelter and S. L. Eipton and B. E. Stoutemyer, Attorneys), including the Secretary of the Interior of the United States and P. M. Fogg, Engineer employed by the United States, in charge of the Minidoka dam on the Snake River; the answer and cross-complaint of John Rohling, A. Kennedy, and others (as filed by J. C. Rogers, Attorney). also claiming rights by reason of said Minidoka Reclamation Project; the answer and cross-complaint of J. H. Day, Clarence E. Williams, and others (filed by C. O. Longley, Attorney); the answer and cross-complaint in intervention of Charles W. Arthur; and the answer of Oscar F. Anderson; Cavanah, Blake and MacLane and A. M. Bowen appearing as counsel for the

ants, The Twin Falls North Side Land and Water Company and the North Side Canal Company, C. H. Lingenfelter and B.E. Stoutemyer appearing as counsel for the Secretary of Interior and for P. M. Fogg and other defendants represented by them, J. C. Rogers appearing for the defendants represented by him, C. O. Longley appearing as counsel for the defendants represented by him, John E. Williams appearing for the defendant, C. W. Arthur;-- and all other defendants herein having been regularly served with summons and not answering or appearing, their default was heretofore regularly entered. Witnesses were sworn and examined and cross-examined and certain documentary evidence introduced in support of the pleadings herein, from which it appears that the plaintiffs and defendants are entitled to the relief and judgments herein awarded, and ^{certain} parties having made and filed their written stipulation consenting and agreeing to the Decree and Judgment as herein made and awarded; Findings of Fact and Conclusions of Law and other written decisions of this Court having been waived by the parties; and the Court being fully advised, it is hereby

ORDERED, ADJUDGED, and DECORDED as follows:

1.

That each and every one of the tracts of land described in the amended complaint, answers, and cross-complaints, in this action as belonging to the several parties or tributary to the canals of certain parties plaintiff and ~~and~~ defendant herein, are arid in character and require the artificial application of water to render them valuable for agricultural purposes.

That the quantity of water required for the successful irrigation and cultivation of said lands, measured at the intake of the respective ditches in second feet shall be the amount of water hereinafter awarded to the several parties.

III

That the quantity of water to which each of the parties to this action is entitled under this decree shall be measured at the point or points of diversion thereof on the Snake River.

IV

That each and every one of the parties hereto, their servants, attorneys, employees, privies, and successors in interest, are hereby enjoined and restrained from any and all interference with or diversion or use of the waters of said Snake River, except as provided in this Decree whenever such interferences, diversion or use would in any manner interfere with the quantity of water awarded by this Decree to any of the other parties to this action.

It is further ORDERED, ADJUDGED, AND DECREED, that none of the parties hereto or their successors in interest shall have a right to the use of the waters of the Snake River beyond the amount that may be required from time to time for their necessary beneficial use, and that water shall not be wasted under any of said systems; and whenever the beneficial use has ceased such party or parties shall cease to divert and have no right to divert the said waters.

V

It is further ORDERED, ADJUDGED, AND DECREED that the amended complaint, answers, and cross-complaints and all

pleadings file in this cause, be and the same are hereby amended to conform to the terms of this judgment.

VI

It is further ORDERED, ADJUDGED, AND DECREED that the parties to this action, or their predecessors in interest, whose rights are adjudicated by this action, did respectively appropriate and divert from the Snake River the quantities of water hereinafter stated, on the dates as hereinafter respectively stated,- such water being estimated and measured in second feet,- and did respectively appropriate such quantities of water for a beneficial use; and that ever since said date of the several appropriations such water has been by said parties and their grantors and predecessors in interest so diverted and used.

VII

That the following named parties, parties to this action, are entitled to the use of the waters of said Snake River upon the lands herein mentioned and described in the following amounts and from the following dates, to-wit:

WATER RIGHT NO. 1.

That the defendant, CHARLES W. ARTHUR, be and he is hereby awarded the use of the waters of Snake River, diverted from a point on the South Side of the said Snake River at a point near the quarter corner between Sections 9 and 4, Township 9 S., Range 15 E. B.M. through what is commonly known as the Arthur Ditch, for use upon said lands lying in the Sections 5 and 6 and 8 in Twp. 9 S., Range 15 E., and Sec. 1, Twp. 9 S., Range 14 E., B.M. in the following amount, from the following date: 2 second feet from the 1st day of November, 1889; hereby designated as Right No. 1.

That the plaintiff, TWIN FALLS CANAL COMPANY, be and it is hereby awarded the use of said waters of the natural flow of said Snake River diverted at the Milner Dam on the South side of the Snake River, through what is commonly known as the Twin Falls South Side Canal, for use upon the lands lying in Twin Falls County, Idaho, South of the Snake River and East of Little Salmon River, to-wit: Sections 27, 28, 29, 30, 31, 32, 33, 34, in Township Ten (10) South, Range Twenty-one (21) East of Boise Meridian; Sections 31, 34, 35, 36, 25, in Township Ten (10) South, Range Twenty (20) East of Boise Meridian; Sections 2, 3, 4, 5, 6, 7, 8, 9, 17, 18, 19, 20, in Township Eleven (11) South, Range Twenty (20) East of Boise Meridian; Sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, in Township Ten (10) South, Range nineteen (19) East of Boise Meridian; Sections 1, 12, 13, in Township Eleven (11) South, Range Nineteen (19) East of Boise Meridian; Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, in Township Ten (10) South, Range Eighteen (18) East of Boise Meridian; Sections Nos. (1) to thirty-three (33) inclusive in Township Eleven (11) South, Range Eighteen (18) East of Boise Meridian; Sections Nos. Twenty-nine (29) to Thirty-six (36) inclusive, in Township Nine (9) South, Range Seventeen (17) East of Boise Meridian; All of said Township in Township Ten South (10 S) Range Seventeen (17) East of Boise Meridian; Sections Nos. One (1) to fifteen (15) inclusive and Section Twenty-four (24) in Township Eleven (11) South, Range Seventeen (17) East of Boise Meridian; Sections

Sixteen (16) to 36 inclusive in Township Nine (9) South, Range Sixteen (16) East of Boise Meridian; Sections Nos. One (1) to Thirty-six (36) inclusive in Twp. Ten (10) South, Range Sixteen (16) East of Boise Meridian; Sections 1, 2, 12, in Township Eleven (11) South, Range Sixteen (16) East of Boise Meridian; Sections Nos. Five (5) to Thirty-six (36) inclusive in Township Nine (9) South, Range Fifteen (15) East of Boise Meridian; Sections Nos. One (1) to Thirty-six (36) inclusive in Township Ten (10) South, Range Fifteen (15) East of Boise Meridian; Sections 5, 6, 7, in Township Eleven (11) South, Range Fifteen (15) East of Boise Meridian; Sections Twenty-eight (28) to Thirty-three (33) inclusive, in Twp. Eight (8) South, Range Fourteen (14) East of Boise Meridian; Sections Four (4) to Thirty-six inclusive, and Section One (1) in Twp. Nine (9) South, Range Fourteen (14) East of Boise Meridian; Sections Nos. One (1) to Thirty-six (36) inclusive in Twp. Ten (10) South; Range Fourteen (14) East of Boise Meridian; Sections One (1) to Twelve (12) inclusive, and Seventeen (17) to Twenty (20) inclusive, in Township eleven (11) South, Range Fourteen (14) East of Boise Meridian; Sections 1, 12, 13, 14, 25, 24, ²⁵/₃₆, in Township Nine (9) South, Range Thirteen (13) East of Boise Meridian; Sections 1, 2, 10, 11, 12, 13, 14, 15, 16, 22, 23, 21, 24, 25, 26, 27, 28, 33, 34, 35, 36 in Township Ten (10) South, Range Thirteen (13), East of Boise Meridian; Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 24, in Township Eleven (11) South, Range Thirteen (13) East of Boise Meridian; All of Township Nine (9) South, Range 18 East of Boise Meridian; and all other lands lying North of the Main and Highline canals of the plaintiff's canal

system, south of said Snake River and East) said Little Salmon River; in the following amount from the following date; 5,000 second feet from October 11, 1900, and hereby designated as Right No. 2A.

That the defendants, the TWIN FALLS NORTH SIDE LAND & WATER COMPANY and the NORTH SIDE CANAL COMPANY, LIMITED, be and are hereby awarded the use of said waters of the natural flow of said Snake River diverted from a point on said Snake River at the Milner Dam on the North Side of the Snake River, through what is commonly known as the North Side Twin Falls Canal, for use upon lands lying on the North Side of Snake River and between said river and the following described lines: Commencing at a point where the West line of Section Three (3), Township Ten (10) South, Range Eighteen(18) East, B.M.; running thence North to the Northwest corner of Section Twenty-seven (27) in said township; thence East to the Northeast corner, Section Twenty-five (25), Township Nine (9) South Range Twenty (20) E. B.M.; thence South to the Southeast corner of Section Thirty-six (36) in said township and range; thence East to the Northeast corner of Section Four (4), Township Ten (10) South, Range Twenty-one (21) East, B. M.; thence South along Section lines to the North bank of Snake River, including within the above area all the lands included within List Six, being a Carey Act Segregation List filed in the United States Land Office at Hailey, Idaho, and comprising the lands commonly known as the First Segregation under the canal system of the Twin Falls North Side Land and Water Company; in the following amount from the following date: 400 second feet from October 11, 1900, and

hereby designate as Right No. 3.

Right No. 3.

That the defendant, the SECRETARY OF THE INTERIOR OF THE UNITED STATES and his successors in office, is hereby awarded the use of the water of the natural flow of the Snake River diverted at Minidoka Dam for use upon the lands lying in the Minidoka Project under the canals of the Minidoka Project in Minidoka and Cassia Counties, Idaho, in the following amount from the following date: 1726 second feet from March 26, 1905, hereby designated as Right No. 3.

RIGHT NO. 4.

That the defendants, THE TWIN FALLS NORTH SIDE LAND AND WATER COMPANY, and the NORTH SIDE CANAL COMPANY, are hereby awarded the use of the waters of the natural flow of Snake River diverted at Milner Dam on the North side of Snake River for use on lands lying under the canal of the North Side Canal Company, in the following amount from the following date: 2250 second feet from October 7, 1905, and hereby designated as Right No. 4, said right being evidenced by the permit of the State Engineer of the state of Idaho, No. 1603, and being the right taken out by the Twin Falls Land & Water Company for the use and benefit of the above named North Side Canal Company, said right including also a storage right for the storage of water of the Snake River as shown by said permit.

RIGHT NO. 5.

That the defendants, THE TWIN FALLS NORTH SIDE LAND AND WATER COMPANY and the NORTH SIDE CANAL COMPANY, are hereby awarded the use of the waters of the natural flow of said Snake River diverted at Milner Dam on the North

Side of the Snake River, for use on the land lying under the canal of said company on the North Side Twin Falls Project in the following amount from June 16, 1908: 890 second feet, or so much thereof as together with the rights herein above awarded to the North Side Canal Company shall make a total of 3,000 second feet, the capacity of the canal, hereby designated as Right No. 5, same being evidenced by the State Engineer's Water Permit No. 3,752, which right has been duly transferred to the Twin Falls North Side Land and Water Company for the use and benefit of the defendant, the North Side Canal Company.

RIGHT NO. 6.

That the defendant, THE SECRETARY OF THE INTERIOR OF THE UNITED STATES, and his successors in office, is hereby awarded the use of the waters of the natural flow of Snake River, diverted at the Minidoka Dam for use on the lands lying under the canals of the Minidoka Project in Minidoka and Cassia Counties, Idaho, in the following amount from August 6, 1908: 1,000 second feet, hereby designated as Right No. 6.

RIGHT NO. 7.

That the defendants, THE TWIN FALLS NORTH SIDE LAND AND WATER COMPANY and the NORTH SIDE CANAL COMPANY, are hereby awarded the use of the waters of the natural flow of Snake River, to be diverted at the Milner Dam on the North Side of Snake River, for the use on the lands lying under the canal system of said company in the following amount from June 2, 1909: 500 second feet, or so much thereof as together with the prior rights herein above awarded to the North Side Canal Company will make a total of 3,000

company, hereby designated as Right No. 7, same being evidenced by the Permit of the State Engineer of Idaho, No. 4489, which was taken up for the use and benefit of the North Side Canal Company.

RIGHT NO. 8.

That the defendant, the SECRETARY OF THE INTERIOR OF THE UNITED STATES and his successors in office, is hereby awarded the use of the waters of the natural flow of Marsh Creek, a tributary of Snake River, in Cassia County, on the lands lying under the canals of the Minidoka Project in Cassia County, Idaho, in the following amount from the following date: 150 second feet from April 10, 1909, hereby designated as Right No. 8.

RIGHT NO. 9.

That the defendant, the SECRETARY OF THE INTERIOR OF THE UNITED STATES, and his successors in office, is hereby awarded the use of the waters of the natural flow of Snake River at Minidoka Dam for power, light, manufacturing, and pumping purposes in the following amount and from the following date: 2,500 second feet from June 15, 1909, and 200 second feet from July 1, 1912, said water to be returned to Snake River below the Minidoka Dam after being used for said power purposes, and hereby designated as Right No. 9.

RIGHT NO. 10.

That the defendant, the SECRETARY OF THE INTERIOR OF THE UNITED STATES, and his successors in office, is hereby awarded the use of the waters of the natural flow of Snake River for the purpose of filling Lake Walcott Reservoir above Minidoka Dam, said water to be thereafter drawn out

and used for irrigation and domestic purposes in the following amount from the following date: 2,500 second-feet from December 14, 1909, hereby designated as Right No. 10.

RIGHT NO. 11

That the defendants, THE TWIN FALLS NORTH SIDE LAND AND WATER COMPANY and the NORTH SIDE CANAL COMPANY, are hereby awarded the use of the waters of the natural flow of Snake River at Milner Dam, to be diverted on the North Side of the Snake River at Milner Dam, for use on the lands under the canal system of said company in the following amount and from June 29, 1910: 3,000 second feet, or so much thereof as together with the prior rights heretofore above awarded to the North Side Canal Company shall make a total amount awarded to said company of 3,000 second feet, the capacity of the canal system of said company, hereby designated as Right No. 11, said right being evidenced by Amended Permit No. 6717 of the State Engineer of the State of Idaho.

STORED WATER.

It is further ORDERED, ADJUDGED AND DECREED that the stored water of the Snake River now or hereafter stored in Lake Walcott Reservoir and Jackson Lake Reservoir, as at present constructed, is hereby awarded to the SECRETARY OF THE INTERIOR OF THE UNITED STATES and his successors in office, operating under the National Reclamation Act, subject to such contracts as he may hereafter make for the delivery thereof; and unless otherwise provided by contract, shall be delivered to the Minidoka Project and canal system.

It is further Ordered, Adjudged and DECREED that the stored waters from the proposed enlargement of Jackson Lake

Reservoir shall when available be distributed as provided in the contract between the United States, the Kuhn Irrigation and Canal Company, and the Twin Falls Canal Company for the enlargement of said reservoir.

The rights decreed to the Twin Falls North Side Land and Water Company and the North Side Canal Company, Limited, except as herein otherwise provided, are for use upon lands lying North of Snake River and between said river, the first segregation, and the following described lines: Commencing on the North line of the lands included in the first segregation at the Southeast corner of Section Twenty (20), Township Nine (9) South, Range Twenty (20) East, E.M., thence North to the Northeast corner of said section; thence West to the Southwest corner of Section Thirteen (13), Township Nine (9) South, Range Nineteen (19) E. E.M., thence North to the Northeast corner of Section Eleven (11), in said Township; thence West to the Southwest corner of Section Three (3) in said Township; thence North to the Northeast corner of Section Thirty-three (33), Township Eight (8) South, Range Nineteen (19) E., E.M., thence West to the Southwest corner of Section Thirty (30) in said Township; thence North to the Northwest corner of section Thirty (30) in said Township; thence West to the Southwest corner of Section Twenty-three (23) Township Eight (8) South, Range Eighteen (18) E. E.M.; thence North to the Northeast corner of Section Three (3), Township Seven South of Range Eighteen (18), E. E.M.; thence West to the Northwest corner of Section Three (3), Township Seven (7) South, Range Sixteen (16) E. E. M.; thence North to the Northeast corner of Section Thirty-two (32), Township Six

(6) South, of Range Sixteen (16) E. B.M.; thence West to the Northwest corner of Section Thirty-one (31) in said Township; thence North to the Northeast corner of Section Twenty-four (24), Township Six (6), South, Range Fifteen (15) E. B.M.; thence West to the Southwest corner of Section Fifteen (15), Township Six (6) South, Range Fourteen (14) E. B.M.; thence West to the Malad River; thence North along the Malad River and Big Wood River to its inter-section with the South Line of Section Twenty-two (22), Township Five (5) South, Range Fourteen (14), E. B.M.; thence West to the Southwest corner of Section Twenty-three (23), Township Five (5) South, Range Twelve (12) E. B.M.; thence North to the Northeast corner of Section Fifteen (15) in said Township; thence West to the Southwest corner of Section Seven (7), in said Township; thence North to the Northwest corner of said Section Seven (7); thence West to the Northwest corner of Section Seven (7), Township Five (5) South, Range Eleven (11), E. B.M.; thence South to Snake River.

It is further ORDERED, ADJUDGED AND DECREED, until otherwise provided by Statute, the State Engineer of the State of Idaho, or his duly authorized deputy, shall determine what part of the water flowing in Snake River at the Minidoka and Milner Dams, is storage waters, and ^{what} ~~part~~ is natural flow, as provided by the Idaho Session Laws of 1909, entitled: "An Act to provide for the safe-guarding of the rights of those Conserving Public Waters in Reservoirs and Prohibiting Misappropriation of such Waters by those having no Right to the Use of the Same, and Declaring a Misdemeanor", the amount of the natural flow to be determined

as such natural flow would be, if unaffected by the diversions or acts of the parties hereto or any or either of them or by the release of stored water, the natural flow to which the Twin Falls Projects are entitled to be measured to them at the Milner Dam.

It is further ORDERED, ADJUDGED AND DECREED that the rights and priorities hereinbefore determined and awarded be and the same are each of them quieted and confirmed as against each and every party hereto; and furthermore that each and all claims to the waters of the Snake River by each or all or said parties adverse to the rights herein awarded and determined, be and they are hereby held for naught and such parties forever barred from asserting same.

Done in Open Court this 20th day of June, 1913,

By the Court.

EDWARD A. WALTERS.

District Judge.

Exhibit C

1 IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF THE
2 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
3

4 BURLEY IRRIGATION DISTRICT, an irrigation
5 district organized and existing under the laws
6 of the State of Idaho; MINIDOKA IRRIGATION
7 DISTRICT, an irrigation district organized and
8 existing under the laws of the State of Idaho;
9 MILNER LOW LIFT IRRIGATION DISTRICT, an
10 irrigation district organized and existing under
11 the laws of the State of Idaho; TWIN FALLS CANAL
12 COMPANY, a corporation; CLARENCE H.
13 TILLEY; WILLIAM KENDELL; FALLS IRRIGATION
14 DISTRICT, an irrigation district organized and
15 existing under the laws of the State of Idaho; A & B
16 IRRIGATION DISTRICT, an irrigation district
17 organized and existing under the laws of the State
18 of Idaho; OTIS ORTEN; AMERICAN FALLS
19 RESERVOIR DISTRICT, an irrigation district organ-
20 ized and existing under the laws of the State of Idaho;
21 AMERICAN FALLS RESERVOIR DISTRICT NO. 2,
22 an irrigation district organized and existing under
23 the laws of the State of Idaho; NORTH SIDE CANAL
24 COMPANY, a corporation; ABERDEEN-SPRINGFIELD
25 CANAL COMPANY, a corporation; REBECCA
26 HOLDEN, a widow; BLACKFOOT IRRIGATION CO.,
27 a corporation; BRAMWELL DITCH CO., a corpora-
28 tion; BUTLER ISLAND CANAL CO., a corporation;
29 BUTTE & MARKET LAKE CANAL CO., a corpora-
30 tion; CLARK & EDWARDS CANAL CO., a corpora-
31 tion; CORBETT SLOUGH DITCH CO., a corporation;
32 DANSKIN DITCH CO., a corporation; DILTS IRRI-
GATION CO., LTD., a corporation; DEWEY FOX;
HARRISON CANAL & IRRIGATION CO., a corpora-
tion; MARVON M. NEWBY; IDAHO IRRIGATION DIS-
TRICT, an irrigation district organized and
existing under the laws of the State of Idaho; MARVIN
M. JOHNSON; WILLIAM S. HOLDEN; TED BLOSCH,
MARVEL JOHNSON and V. E. HIER; LABELLE
IRRIGATION CO., a corporation; LIBERTY PARK
IRRIGATION CO., a corporation; LONG ISLAND
IRRIGATION CO., a corporation; ROBERT D.
MACKAY; JOHN L. NELSON, ADRIAN NELSON,
ERVEN SCOTT, VELMA ANDERSON and LAURA
ANDERSON; NEW SWEDEN IRRIGATION DISTRICT,
an irrigation district organized and existing under
the laws of the State of Idaho; CARL JOHNSON;
UTAH-IDAHO SUGAR CO., a corporation; PROGRES-
SIVE IRRIGATION DISTRICT, a corporation; REID
CANAL CO., a corporation; RIVERSIDE DITCH CO.,
a corporation; SHATTUCK IRRIGATION CO., a
corporation; SAM SAKAGUCHI; SNAKE RIVER VALLEY
IRRIGATION DISTRICT, an irrigation district organ-
ized and existing under the laws of the State of Idaho;
TEXAS SLOUGH IRRIGATING CANAL CO., a corpora-
tion; R. DuWAYNE SCOTT; WEST LABELLE IRRIGA-
TION CO., a corporation; ENTERPRISE IRRIGATION
DISTRICT, an irrigation district organized and
existing under the laws of the State of Idaho;

COMPLAINT

1 RALPH D. MILLER; FARMERS FRIEND
2 CANAL CO., a corporation; SALEM UNION
3 CANAL CO., a corporation; EGIN IRRIGA-
4 TING CO., a corporation; INDEPENDENT
5 CANAL CO., LTD., a corporation; JAMES
6 A. CROFT; PINCOCK-BYINGTON CANAL CO.,
7 a corporation; PINCOCK-GARNER DITCH COMPANY,
8 a corporation; FALL RIVER IRRIGATION CO.,
9 a corporation; ST. ANTHONY UNION CANAL CO.,
10 a corporation; CONSOLIDATED FARMERS CANAL
11 COMPANY, a corporation; WILFORD IRRIGATION
12 & MFG. CO., a corporation; D. F. RICHARDS;
13 D. V. HAGENBARTH; AL FRAZIER; SAUREY-
14 SOMMER DITCH by LeRoy Saurey; FARMERS
15 OWN DITCH CO., a corporation; TETON IRRIGA-
16 TION & MFG. CO., a corporation; GEORGE BAUER,
17 BENJAMIN STEWART, ANDREW STEWART, ANNIE
18 WRIGHT, BOYD HOLLIST and ALICE P. BIRCH,
19 operating as Stewart Canal; BURGESS CANAL &
20 IRRIGATING CO., a corporation; CRAIG MATTSON
21 CANAL CO., a corporation; ENTERPRISE CANAL
22 CO., LTD., a corporation; FOOD MACHINERY &
23 CHEMICAL CORP., a corporation; ISLAND IRRIGA-
24 TION COMPANY, a corporation; J. R. SIMPLOT CO.,
25 a corporation; THE LENROOT CANAL CO., a
26 corporation; LOWDER SLOUGH CANAL CO., LTD.,
27 a corporation; THE MARTIN CANAL CO., a cor-
28 poration; THE NEW LAVA SIDE DITCH CO., a
29 corporation; NORTH RIGBY IRRIGATION & CANAL
30 CO., a corporation; OWNERS MUTUAL IRRIGATION
31 CO., a corporation; PARKS & LEWISVILLE IRRI-
32 GATION CO., a corporation; PARSONS DITCH CO.,
a corporation; PEOPLES CANAL & IRRIGATION
CO., a corporation; CITY OF POCA TELLO, a
municipal corporation of the State of Idaho; POPLAR
IRRIGATION DISTRICT, an irrigation district
organized and existing under the laws of the State
of Idaho; THE RIGBY CANAL & IRRIGATING CO.,
a corporation; RUDY IRRIGATION CANAL CO., a
corporation; SUNNYDELL IRRIGATION DISTRICT,
an irrigation district organized and existing under
the laws of the State of Idaho; THE TREGO DITCH CO.,
a corporation; WATSON SLOUGH DITCH & IRRIGATION
CO., LTD., a corporation; WEARYWICK DITCH CO.,
a corporation; WEST SIDE MUTUAL CANAL CO., a
corporation; WOODVILLE CANAL CO., a corporation;
and PALISADES WATER USERS, INC., a corporation,

Plaintiffs,

-vs-

HENRY EAGLE, Watermaster, Water
District No. 36, State of Idaho,

Defendant.

1 Plaintiffs allege:

2 COUNT ONE

3 I.

4 Since on or about the 3rd day of March, 1959, the defendant,
5 Henry Eagle, has been, and now is, the duly elected, qualified and acting
6 watermaster of District No. 36 for the State of Idaho.

7 II.

8 Each of the above named plaintiffs and their predecessors have
9 for many years been diverting water from Snake River and its tributaries to
10 irrigate land owned by them or their stockholders or electors and each of the
11 above named plaintiffs herein stipulate and agree that all provisions of the
12 hereinafter mentioned decrees (attached hereto and marked Exhibits "A", "B"
13 and "C" and made a part hereof as if specifically set out herein) are presently
14 binding on all parties hereto, i. e.:

15 Exhibit A. The decree entered in the District Court of the
16 Sixth Judicial District of the State of Idaho, in and for the County
17 of Fremont, signed by Judge J. M. Stevens, in the case entitled
18 Rexberg Irrigation Company, et al., Plaintiffs v. Teton Irrigation
19 Canal Company, et al., Defendants, filed December 16, 1910, here-
20 inafter referred to as the Rexberg Decree.

21 Exhibit B. The decree entered in the District Court of the
22 Fourth Judicial District of the State of Idaho, in and for the County
23 of Twin Falls, signed by Edward A. Walters, District Judge,
24 in the case entitled Twin Falls Canal Company, Plaintiff v. Charles
25 N. Foster, et al., Defendants, dated and filed June 20, 1913,
26 hereinafter referred to as the Foster Decree.

27 Exhibit C. The decree entered in the District Court of the
28 United States for the District of Idaho, Eastern Division, and
29 signed by Charles C. Cavanah, District Judge, in the case entitled
30 Woodville Canal Company, Plaintiff v. Clark & Edward Canal and
31 Irrigating Company, et al., Defendants, dated and filed on June
32 25, 1929, and hereinafter referred to as the Woodville Decree.

1 "And it is stipulated and agreed that said rights in this
2 paragraph above mentioned and each of them, shall be for the pur-
3 pose of this stipulation, and the decree to be entered herein deemed
4 to be of the same force and effect as if they had been included in the
5 original Foster Decree; and that whenever the term "Foster Decree"
6 is used herein, it shall be deemed to include the two rights of this
7 paragraph above mentioned and that said rights shall have any and all
8 rights and privileges herein granted to the other rights enumerated
9 in the said Foster Decree, and that said rights shall be decreed
10 herein as follows:

11 "Twin Falls Canal Co., 600 sec. ft., priority date,
12 Dec. 22, 1915."

13 "North Side Canal Co., 300 sec. ft., priority date,
14 Dec. 23, 1915."

15 IV.

16 Pursuant to said Woodville Decree and the stipulation incorporated
17 therein, as set out in Count Three, Paragraph I, above, the Twin Falls Canal
18 Company is recognized as owning and does own a right to 600 cubic feet per
19 second of the waters of Snake River with a priority date of December 22, 1915.

20 COUNT FOUR

21 I.

22 Since on or about the 3rd day of March, 1959, the defendant, Henry
23 Eagle, has been, and now is, the duly elected, qualified and acting watermaster
24 of District No. 36 for the State of Idaho.

25 II.

26 Certain of the plaintiffs have heretofore entered into contracts with
27 the United States of America, Bureau of Reclamation for the Minidoka and
28 Palisades Projects, located in Idaho, in the forms attached hereto as Exhibits
29 "D", "E", "F", "G", and "H", made a part hereof as if set out at length herein.
30 Such exhibits are examples of the different types of contracts made between
31 the parties hereto and the United States of America. Said contracts were
32 later amended and modified by supplemental and amendatory contracts, copies
of which are attached hereto and correspondingly marked Exhibits "D (1)",
"E (1)", "F (1)", "G (1)", and "H (1)", and made a part hereof as if set out
at length herein. Said contracts, as amended, supplemented and modified,
include the following paragraphs which plaintiffs allege govern the rights of
the parties hereto in and to the waters of the Snake River and its tributaries:

- 1 A. Paragraph entitled Saving of Winter Water; Special Storage
2 Right. This paragraph provides for the curtailment of winter
3 water diversions from the Snake River or its tributaries
4 during the storage season from November 1 through April 30
5 and provides for the allocation to the plaintiffs of the water
6 savings attributed to the curtailment of said winter diversions.
- 7 B. Paragraphs entitled Consent to American Falls - Jackson
8 Lake Exchange and Redefinition of Jackson Lake Storage
9 Rights. These paragraphs, as amended, provide for certain
10 exchanges of American Falls Reservoir and Jackson Lake
11 Reservoir storage rights by the parties hereto and authorizes
12 the United States to operate the space in Jackson Lake
13 Reservoir on an individual holdover basis.
- 14 C. Paragraph entitled Temporary Storage and Exchange of
15 Water; Release of Jackson Lake and Palisades Water for
16 Power Production - - This paragraph authorizes the Water-
17 master with the advice and consent of the advisory committee,
18 as defined in said contract, to temporarily store water up-
19 stream and make certain exchanges between upstream
20 reservoirs of storage water so as to accomplish the purpose
21 of retaining water upstream and sets forth the conditions
22 under which water may be released from Palisades Reservoir
23 for power generation.
- 24 D. Paragraph entitled Priority of Certain Existing and Future
25 Water Rights. -- This paragraph sets by agreement the
26 priority of certain storage water rights held for Island Park
27 Reservoir whereby all Palisades contractors agreed that the
28 storage rights held by the United States in connection with
29 Island Park Reservoir under Water License No. R-590 and
30 Water License No. R-686 could be treated as having a
31 priority date of March 14, 1935; pursuant to this paragraph,
32 all Palisades contractors also agreed that the United States

1 may contract with American Falls Reservoir District No. 2
2 so that the rights of that district under Water License No.
3 15134, with a priority date of March 30, 1921, will be
4 exercised in accordance with the following example para-
5 graphs of said contracts:

6 "American Falls Reservoir District No. 2 to have the
7 right to divert as natural flow during each irrigation season
8 under water license No. 15134, having a March 30, 1921
9 priority, as follows: From May 1 of each irrigation season
10 continuing during that season so long as there is natural flow
11 available for that priority, the first 1,700 cubic feet per
12 second of flow to be available one-half (1/2) to American
13 Falls Reservoir District No. 2 and one-half (1/2) to American
14 Falls Reservoir, except that in any year in which American
15 Falls Reservoir is full to capacity on April 30 or fills after
16 that date, taking into account any water that may be temporar-
17 ily 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.

18 Water available at American Falls Reservoir for the
19 March 30, 1921 priority under water license No. 15134,
20 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."

21 This paragraph further provides that the United States shall
22 make application to the State of Idaho for the amendment of
23 Water Permit No. 15134, and the issuance thereunder, with
24 a priority date of March 30, 1921, so that the remainder of
25 the right under the permit, 6,300 cubic feet per second, to
26 the extent that such right remains outstanding, be used for
27 storage in American Falls Reservoir, but that such applica-
28 tion shall not affect Water License No. R-269 having a
29 priority date of March 30, 1921; the paragraph further pro-
30 vides that the development of the next 300,000 acre-feet of
31 storage by the United States under the federal reclamation
32 laws by the construction of any storage facilities on Snake

1 River or its tributaries above Milner Dam shall be
2 operated as if it had a priority date equal to that of
3 Palisades Reservoir.

4 III.

5 Plaintiffs allege that the contractual provisions set forth in
6 paragraphs II, A, B, C, and D above, are binding upon the plaintiffs hereto
7 and the plaintiffs accept and recognize that their respective rights in and to
8 the waters of the Snake River and its tributaries are subject to the terms and
9 conditions of said contractual provisions.

10 COUNT FIVE

11 I.

12 Since on or about the 3rd day of March, 1959, the defendant, Henry
13 Eagle, has been, and now is, the duly elected, qualified and acting watermaster
14 of District No. 36 for the State of Idaho.

15 II.

16 The plaintiff, American Falls Reservoir District No. 2, is duly
17 created and now existing under the laws of the State of Idaho, for the purpose
18 of owning and distributing irrigation waters to landowners within the district,
19 and said plaintiff has for many years been distributing, and now distributes,
20 irrigation waters to land within the following described sections in the counties
21 of Jerome, Gooding and Lincoln, State of Idaho, and within the boundaries of
22 Water District No. 36:

23 Township 2 South, Range 18 East, Boise Meridian:
24 Sections 28 through 33.

25 Township 3 South, Range 18 East, Boise Meridian:
26 Sections 14, 15, 22, 23, 25, and 36.

27 Township 3 South, Range 19 East, Boise Meridian:
28 Sections 14 through 27, 30, 31, 35, and 36.

29 Township 3 South, Range 20, East, Boise Meridian:
30 Sections 30 and 31.

31 Township 4 South, Range 14 East, Boise Meridian:
32 Sections 35 and 36.

Township 4 South, Range 15 East, Boise Meridian:
Sections 31 and 36.

1 as recognized in paragraph 6 of the stipulation included in the Woodville
2 Decree, which was entered the 25th day of June, 1929, and recognized as
3 binding by the parties hereto.

4 2. That the North Side Canal Company be adjudged and decreed
5 the owner of a certain water right in the amount of 1,260 cubic feet per
6 second acquired under Permit No. 15001 on which proof of beneficial use of
7 water was made January 11, 1932, with a priority date of August 6, 1920.

8 3. For such other and further relief as to the Court is just and
9 equitable.

10 ON COUNT THREE

11 1. That the Twin Falls Canal Company, an Idaho corporation, be
12 adjudged and decreed the owners of one certain water right in the amount of
13 600 cubic feet per second with a priority date of December 22, 1915, as
14 recognized in paragraph 6 of the stipulation included in the Woodville Decree,
15 which was entered the 25th day of June, 1929, and recognized as binding by
16 the parties hereto.

17 2. For such other and further relief as to the Court is just and
18 equitable.

19 ON COUNT FOUR

20 1. That this Court ratify, confirm, and approve the following
21 provisions of the Contracts as amended, which paragraphs are common to
22 each amended Contract entered between each party hereto, and the United
23 States of America Bureau of Reclamation, for the Minidoka and Palisades
24 Projects - Idaho, to-wit:

25 (A) Entitled Saving of Winter Water; Special Storage Right;

26 (B) Entitled Consent to American Falls - Jackson Lake Exchange
27 and Redefinition of Jackson Lake Storage Rights;

28 (C) Entitled Temporary Storage and Exchange of Water; Release
29 of Jackson Lake and Palisades Water for Power Production;

30 (D) Entitled Priority of Certain Existing and Future Water Rights;

31 and that these provisions as set forth in Count Four of plaintiffs' Complaint
32 be decreed binding upon the parties hereto.

2. For such other and further relief as to the Court is just and equitable.

ON COUNT FIVE

1. That the American Falls Reservoir District No. 2, an irrigation district duly created and existing under the laws of the State of Idaho, be adjudged and decreed as owning 23.53% of the active capacity of American Falls Reservoir and be it further adjudged and decreed the right to divert a maximum natural flow the waters of Snake River of 1,700 cubic feet per second under Water License No. 15134, with a priority date of March 30, 1921, in any year that American Falls Reservoir is full to capacity on April 30 or fills after that date, without said natural flow water being charged as storage.

2. That this Court ratify, confirm, and approve Article 20 of Contract No. 14-06-W-73 entered between the United States of America and American Falls Reservoir District No. 2 as set forth in Count Five, paragraph III of this Complaint.

3. For such other and further relief as to this Court is just and equitable.

PARRY, ROBERTSON & DALY

By

[Signature]
Attorneys for Plaintiffs, Twin Falls Canal Company, North Side Canal Company, A & B Irrigation District, Falls Irrigation District, American Falls Reservoir District, Clarence H. Tilley, William Kendell, and Otis Orten.

JAMES HOBDEY & SHAW

By

[Signature]
Attorneys for Plaintiff, American Falls Reservoir District No. 2

NIELSON & NIELSON

By

[Signature]
Attorneys for Plaintiffs, Burley Irrigation District and Milner Low Lift Irrigation District

ROGER D. LING

[Signature]
Attorney for Plaintiff, Minidoka Irrigation District

HOLDEN, HOLDEN & KIDWELL

By

William S. Holden

Attorneys for Plaintiffs, Aberdeen-Springfield Canal Company, Blackfoot Irrigation Company, Butler Island Canal Company, Butte & Market Lake Canal Company, Clark & Edwards Canal or Irrigation Company, Corbett Slough Ditch Company, Danskin Ditch Company, Dilts Irrigation Company, Limited; Harrison Canal & Irrigation Company, Idaho Irrigation District, LaBelle Irrigation Company, Liberty Park Irrigation Company, New Sweden Irrigation District, Progressive Irrigation District, Reid Canal Company, Riverside Ditch Company, Shattuck Irrigation Company, Snake River Valley Irrigation District, Texas Slough Irrigating Canal Company, Rebecca Holden, Bramwell Ditch Company, James A. Croft, Dewey Fox, Marvon M. Newby, William S. Holden, Ted Bloesch, Marvel Johnson & V. E. Hier; Long Island Irrigation Company, R. D. Mackay, John L. Nelson, Adrian Nelson, Ervin Scott, Velma Anderson & Laura Anderson; Utah-Idaho Sugar Company, Carl Johnson, Sam Sakaguchi, R. DuWayne Scott, West LaBelle Irrigation Company, Farmers Own Ditch Company, Enterprise Irrigation District, Ralph D. Miller, Fall River Irrigation Company, St. Anthony Union Canal Company, Farmers Friend Canal Company, Salem Union Canal Company, Egin Irrigation Company, Independent Canal Company, Limited; Consolidated Farmers Canal Company, Wilford Irrigation Company, Teton Irrigation Company, George Bauer, Benjamin Stewart, Andrew Stewart, Annie Wright, Boyd Hollist & Alice P. Birch; Pincock-Byington Canal Company, Pincock-Garner Ditch Company, LeRoy Suarez, D. F. Richards, D. V. Hagenbarth, Al Frazier, Marvin M. Johnson, Burgess Canal & Irrigating Co., Craig Mattson Canal Co., Enterprise Canal Co., Ltd., Food Machinery & Chemical Corp., Island Irrigation Company, J. R. Simplot Co., The Lenroot Canal Co., Lowder Slough Canal Co., Ltd., The Martin Canal Co., The New Lava Side Ditch Co., North Rigby Irrigation & Canal Co., Owners Mutual Irrigation Co., Parks & Lewisville Irrigation Co., Parsons Ditch Co., Peoples Canal & Irrigation Co., City of Pocatello, Poplar Irrigation District, The Rigby Canal & Irrigating Co., Rudy Irrigation Canal Co., Sunnyside Irrigation District, The Trego Ditch Co.,

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Watson Slough Ditch & Irrigation Co., Ltd.,
Wearywick Ditch Co., West Side Mutual
Canal Co., Woodville Canal Co., and
Palisades Water Users, Inc.

Exhibit D

1 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT FOR THE
2 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
3

4 BURLEY IRRIGATION DISTRICT, et al,

5 Plaintiffs,

6 -vs-

7 HENRY EAGLE, Watermaster, Water
8 District No. 36, State of Idaho,

9 Defendant.

10 STIPULATION

11 The parties signatory hereto do hereby stipulate and agree that
12 the following facts, and conclusions derived therefrom, are true and correct,
13 and shall be the basis for the entry of judgment herein, to-wit:

14 I.

15 (a) That the priority of the right to use waters of the Snake River
16 and its tributaries with points of diversion at or upstream from Milner Dam
17 (and its tributaries) have been determined by decrees of Courts of competent
18 jurisdiction (including but not limited to the decree in the case entitled Twin
19 Falls Canal Company v. Charles N. Foster, et al, entered in the District
20 Court of the Fourth Judicial District Court of the State of Idaho, in and for the
21 County of Twin Falls on June 20, 1913, hereafter called "Foster Decree") and
22 that thereafter, and after said decrees, numerous parties have acquired rights
23 to the use of the waters of said Snake River and its tributaries with points of
24 diversion at Milner Dam or above.

25 (b) That the parties Plaintiff herein are persons who have so
26 acquired such water rights and that they have brought this action under and
27 pursuant to provisions of Idaho Code Section 42-1405.

28 II.

29 That all the parties Plaintiff herein do hereby accept as binding
30 upon them the provisions of all prior decrees which have been entered with
31 respect to the waters of Snake River and its tributaries above Milner Dam,
32 including, particularly, but not limited to (1) The Foster decree mentioned in

1 the preceding paragraph; (2) The decree entered in the District Court of the
2 Sixth Judicial District of the State of Idaho in and for the County of Fremont in
3 the case entitled Rexburg Irrigation Company, et al, vs. Teton Irrigation Canal
4 Company, et al, filed December 16, 1910, (hereinafter "Rexburg Decree");
5 and (3) The decree entered in that certain case entitled Woodville Canal
6 Company vs. Clark and Edwards Canal and Irrigation Company, et al, in the
7 District Court of the United States for the District of Idaho, Eastern Division,
8 on June 25, 1929, (hereinafter "Woodville Decree") and all other prior valid
9 decrees of such water.

10 III.

11 (a) That the defendant, Henry Eagle, is now and has been at all
12 times since March 3, 1959, the duly qualified and acting Watermaster of
13 Water District No. 36 of the State of Idaho; said District being duly created
14 and existing under the laws of the State of Idaho for the purpose of distributing
15 the waters within its boundaries, including all of the waters referred to and
16 affected by this action.

17 (b) That all of the lands of the parties Plaintiff hereinafter
18 described are located within the boundaries of, and irrigated by the waters of
19 Snake River and its tributaries within, said Water District No. 36.

20 IV.

21 That proper and sufficient notice of the pendency and purpose of
22 the above-entitled action was published in newspapers having general circulation
23 in the counties of Power, Cassia, Minidoka, Twin Falls, Jerome, Blaine,
24 Gooding, Lincoln and Elmore, Idaho, and that all provisions of Idaho Code
25 Section 42-1405 relating to notice and publication of notice have been complied
26 with.

27 V.

28 That the parties Plaintiff herein comprise all persons diverting
29 water from, and claiming or asserting rights to divert water from, the Snake
30 River and its tributaries above Milner Dam and within the boundaries of said
31 Water District No. 36, according to the records and filed of defendant Henry
32 Eagle; and comprise, collectively, all presently known parties who are or will
be affected by the entry of the Supplemental Decree to be entered herein.

VI.

(a) That the parties Plaintiff herein have over a period of many years, cooperated, planned and worked for a common fair, equitable and just plan designed to result in the most efficient, fair and complete beneficial use of all the waters of the Snake River and its tributaries.

(b) That such cooperative planning and adjustment of rights, then, present and future, became and was particularly necessary prior to, and in connection with the planning for the Palisades Reservoir, the securing of Congressional authorization and appropriation for said reservoir and the irrigation projects related thereto and authorized in connection therewith, including particularly, but not limited to, the irrigation project, known as the Minidoka North Side Extension, hereinafter particularly described as being owned and operated by the A & B Irrigation District.

(c) That in connection with the establishment of the water rights for said Palisades Reservoir, it was particularly necessary for the parties Plaintiff to agree among themselves, and avoid extensive, expensive and delaying litigation by so agreeing upon a common priority date for those persons who were using, or were making plans to construct projects and perfect rights to use, the so-called "Flood Water Rights," being those waters of the river which were only available during periods of high flow; and which the parties Plaintiff had been using to the best of their ability and to the extent of their irrigation works, or were planning to use as projects were constructed; and that the parties Plaintiff did at such time agree on a common priority date of April 1, 1939, for such rights, which said agreement has been acted upon by all of the parties Plaintiff hereto continuously, and deliveries have been made in accordance therewith by defendant Henry Eagle.

(d) It was also known and agreed that as a result of the construction of Palisades Reservoir, it would be to the best interests of all water users to enter into contracts for the exchange of certain rights between those holding rights in Jackson Lake Reservoir and those holding rights in American Falls in order to reduce river transmission losses and to permit more effective

1 river regulation by permitting the use of waters so far as possible by those
2 having diversions closest to the respective reservoirs.

3 (e) It was also known and agreed that the parties Plaintiff would
4 and they did, enter into specific contracts with the Bureau of Reclamation with
5 respect to their storage rights in Palisades Reservoir, Jackson Lake Reservoir,
6 Island Park Reservoir, Grassy Lake Reservoir, Lake Walcott Reservoir, and
7 American Falls Reservoir and with respect to the acknowledgment and award of
8 certain priorities as hereinafter more specifically set forth.

9 (f) That it was necessary to agree that additional projects
10 authorized by the Congress of the United States as an integral part of the
11 Palisades Reservoir legislation would have their proportionate rights in said
12 so-called flood water rights with said priority date of April 1, 1939, and that
13 said legislation was achieved, and said projects were authorized and constructed,
14 and have been developed, on the basis of such understanding as to their water
15 rights; and that such projects have used water from the Snake River under such
16 claimed priority date as promptly as they were able to do so, dependent upon
17 the construction of their facilities.

18 (g) That it was also known and agreed that it was necessary that
19 the parties Plaintiff achieve a solution of the controversy as to the respective
20 rights of American Falls Reservoir District No. 2 and the other owners of
21 space in American Falls Reservoir which had been left unsettled by the Wood-
22 ville Decree; and that such settlement has been achieved between the parties
23 Plaintiff and the Bureau of Reclamation by provisions in the contracts as herein-
24 after more specifically set out.

25 (h) That as a necessary condition to the authorization, financing,
26 and construction of the Palisades Reservoir, it was decided that there should
27 be certain savings of winter water to be accomplished by cessation of winter
28 deliveries and with accompanying added storage privileges for the users
29 ceasing such diversion and that this would be needed to be accomplished by
30 proper contracts with the Bureau of Reclamation, which contracts have been
31 executed.

1 all other existing water rights appurtenant to said lands; and that the additional
2 rights herein stipulated to be decreed hereby shall not in any way change, alter,
3 vary, or diminish any and all other water rights possessed or owned by the
4 parties hereto or appurtenant to the lands hereinafter described.

5 IX.

6 That all of the parties to this action to whom water rights are
7 stipulated to be decreed have constructed, operated, and now control and
8 maintain all necessary diversion dams, canals, laterals and distribution
9 systems adequate to divert and distribute to the proper lands all of the waters
10 herein stipulated to be decreed to them, in addition to all other water rights
11 owned by the said parties.

12 X.

13 That all of the supplemental waters herein agreed to be decreed
14 are required for and will be beneficially used for the production of agricultural
15 crops and associated domestic uses upon the lands to which they are stipulated
16 to be decreed and have been used and will be beneficially used in such manner
17 and such supplemental waters shall not be transferrable to any lands other
18 than those lands hereinafter described in Paragraph XVI.

19 XI.

20 That some of the rights hereinafter specifically agreed to be
21 decreed herein have been acquired by or decreed to the parties Plaintiff in
22 other proceedings or by other methods, and that it is the desire of the parties
23 Plaintiff hereto that all of such rights be stipulated, enumerated and decreed
24 in this action, in which all parties in interest in waters of Snake River above
25 Milner Dam are parties.

26 That it will greatly aid and assist all responsible State officials,
27 Watermasters and other officials in handling, managing and distributing the
28 waters of the Snake River and its tributaries above Milner Dam to have those
29 rights enumerated and listed in one decree as is intended to be accomplished
30 by this action.

1 Township Nine (9) South, Range Twenty-two (22) East of
2 Boise Meridian: Sections One (1) through Five (5)
3 inclusive, Seven (7) through Fifteen (15) inclusive,
4 Seventeen (17) through Twenty-three (23) inclusive,
5 Twenty-seven (27) through Thirty-four (34) inclusive;

6 Township Eight (8) South, Range Twenty-two (22) East of
7 Boise Meridian: Sections 24, 25, 30, 35;

8 Township Ten (10) South, Range Twenty-one (21) East of
9 Boise Meridian: Sections One (1) through Four (4), Eight
10 (8) through Sixteen (16), Twenty-one (21) through Twenty-
11 four (24);

12 Township Nine (9) South, Range Twenty-one (21) East of
13 Boise Meridian: Sections One (1) through Four (4), Seven
14 (7) through Twelve (12), Fifteen (15) through Eighteen (18),
15 21, 22, 25, 26, Thirty-three (33) through Thirty-six (36)
16 inclusive;

17 Township Eight (8) South, Range Twenty-one (21) East of
18 Boise Meridian: Sections Twenty-two (22) through Twenty-
19 seven (27), inclusive, Thirty-three (33) through Thirty-
20 six (36) inclusive.

21 I. OTIS ORTON

22 Otis Orton shall have the right to divert and use 4.00 cubic feet
23 of water per second at the following point of diversion and upon the following
24 described lands:

25 Point of Diversion

26 Lots One (1) and Four (4), Section Twenty-one (21),
27 Township Ten (10) South, Range Twenty-two (22), E.B.M.

28 Lands to Which Appurtenant

29 N 1/2 of Section 21 and Lots 1 and 3, E 1/4 of NE 1/4 of
30 Section 20, Township 10 South, Range 22 East, Boise
31 Meridian.

32 XVII.

(a) That the contracts entered between various of the parties
Plaintiff and the United States of America, Bureau of Reclamation, in
connection with the Palisades and other projects, as amended and modified,
were intended to be, and should be, binding upon all persons claiming rights
to the use of the waters of Snake River and its tributaries above Milner Dam;
and although the provisions of said contracts provide the basis of a common
plan for the administration of the waters of Snake River, certain paragraphs
of said contracts, common to all types of contracts with the various parties
Plaintiff, contain the major areas of agreement.

1 Typical examples of the common paragraphs setting forth the
2 major areas of agreement are hereafter attached. A typical example of the
3 common paragraph relating to "Saving of Winter Water; Special Storage Right"
4 is hereto attached, marked Exhibit A. A typical example of the paragraph
5 relating to "Permanent Exchange of the American Falls and Jackson Lake
6 Storage Rights and Redefinition of Storage Rights" is hereto attached, marked
7 Exhibit B. A typical paragraph relating to "Temporary Storage and Exchange
8 of Water; Release of Jackson Lake and Palisades for Power Production" is
9 hereto attached, marked Exhibit C. A typical paragraph relating to "Priority
10 of Certain Existing and Future Water Rights" is hereto attached and marked
11 Exhibit D.

12 (b) During the negotiation of the contracts entered between the
13 various parties Plaintiff and the United States of America, Bureau of
14 Reclamation, referred to in Paragraph XVII (a) immediately above, it was
15 necessary to make special arrangements with the Minidoka Irrigation District
16 for the purpose of effecting annual exchanges of water, as well as fixing the
17 carry-over rights of said district in connection with Jackson Lake storage.
18 Since the majority of the contracts referred to in Paragraph XVII (a) immediate-
19 ly above had already been executed, and because the contract finally executed
20 by the United States of America, Bureau of Reclamation, and the Minidoka
21 Irrigation District, setting forth these special arrangements required agree-
22 ment and confirmation by all of the various parties Plaintiff, it was then
23 necessary that each contract be amended and supplemented so as to confirm
24 these appropriate provisions of the Minidoka Irrigation District's contract.
25 The contracts as amended and supplemented provide the basis of a common
26 plan for the orderly administration of the waters of the Snake River above
27 Milner Dam. The pertinent paragraphs of the contract entered by the United
28 States of America, Bureau of Reclamation, and the Minidoka Irrigation District,
29 the contents of which paragraphs were confirmed by all other various parties
30 Plaintiff in amendatory and supplemental contracts, are hereto attached
31 and marked Exhibit E.

1 (c) In addition to the contracts entered between the various
2 parties Plaintiff and the United States of America, Bureau of Reclamation,
3 referred to in Paragraph XVII (a) and (b) of this Stipulation, a Memorandum
4 of Agreement between the Bureau of Reclamation and the Bureau of Indian
5 Affairs was executed, setting forth special provisions relating to the water
6 supply for the Michaud Division of the Fort Hall Indian Reservation, Idaho,
7 by which Memorandum of Agreement, the Bureau of Indian Affairs agreed to
8 be bound by those common provisions of the contracts of the various parties
9 Plaintiff so that the Snake River above Milner Dam could be successfully and
10 efficiently administered. The most pertinent paragraphs of this Memorandum
11 of Agreement are hereto attached and marked Exhibit F.

12 (d) That the Decree to be entered herein shall provide that the
13 provisions of the said contracts and the specific exhibits attached hereto are
14 and shall be binding upon all of the parties Plaintiff herein and that the pro-
15 visions thereof shall be stated in and so provided in the Decree to be entered
16 herein.

17 XVIII.

18 That the provisions of this Stipulation are deemed to be and
19 shall be treated as the Findings of Fact and Conclusions of Law in this
20 proceeding.

21 XIX.

22 That a Decree in conformity with this Stipulation, in form and
23 content as set out in attached Exhibit G may be entered forthwith without
24 additional notice to the parties hereto.

25 DATED this 17th day of May, 1968.

26 PARRY, ROBERTSON & DALY

27 By [Signature]

28 Attorneys for Plaintiffs, Twin Falls
29 Canal Company, North Side Canal
30 Company, A & B Irrigation District,
31 Falls Irrigation District, American
32 Falls Irrigation District, Clarence
H. Tilley, William Kendell, and
Otis Orton.

1 JAMES, HOBDEY & SHAW

2 By *Paul D. Hobdey*

3 Attorneys for Plaintiff,
4 American Falls Reservoir
5 District No. 2.

6 NIELSON & NIELSON

7 By *A. Nielson*

8 Attorneys for Plaintiffs,
9 Burley Irrigation District and
10 Milner Low Lift Irrigation District.

11 ROGER D. LING

12 By *R. D. Ling*

13 Attorney for Plaintiff,
14 Minidoka Irrigation District.

15 HOLDEN, HOLDEN & KIDWELL

16 By *Robert B. Holden*

17 Attorneys for Plaintiffs,
18 Aberdeen-Springfield Canal Com-
19 pany, Blackfoot Irrigation Company,
20 Butler Island Canal Company, Butte
21 & Market Lake Canal Company,
22 Clark & Edwards Canal or Irriga-
23 tion Company, Corbett Slough Ditch
24 Company, Danskin Ditch Company,
25 Dilts Irrigation Company, Limited;
26 Harrison Canal & Irrigation Com-
27 pany, Idaho Irrigation District,
28 Labelle Irrigation Company, Liberty
29 Park Irrigation Company, New
30 Sweden Irrigation District, Pro-
31 gressive Irrigation District, Reid
32 Canal Company, Riverside Ditch
Company, Shattuck Irrigation Com-
pany, Snake River Valley Irrigation
District, Texas Slough Irrigating
Canal Company, Rebecca Holden,
Bramwell Ditch Company, James
A. Croft, Dewey Fox, Marvon M.
Newby, William S. Holden, Ted
Blosch, Marvel Johnson & V. E.
Hier, Long Island Irrigation Com-
pany, R. D. Mackay, John L.
Nelson, Adrian Nelson, Ervin Scott,
Velma Anderson & Laura Anderson,
Utah- Idaho Sugar Company, Carl
Johnson, Sam Sakaguchi, R.
DuWayne Scott, West Labelle
Irrigation Company, Farmers Own
Ditch Company, Enterprise Irriga-
tion District, Ralph D. Miller, Fall
River Irrigation Company, St.
Anthony Union Canal Company,

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Farmers Friend Canal Company,
Salem Union Canal Company, Egin
Irrigating Company, Independent
Canal Company, Limited; Consoli-
dated Farmers Canal Company,
Wilford Irrigation Company, Teton
Irrigation Company, George Bauer,
Benjamin Stewart, Andrew Stewart,
Annie Wright, Boyd Hollist &
Alice P. Birch; Pincock-Byington
Canal Company, Pincock-Garner
Ditch Company, LeRoy Saurey,
D. F. Richards, D. V. Hagenbarth,
Al Frazier, Marvin M. Johnson,
Burgess Canal & Irrigating Co.,
Craig Mattson Canal Co., Enter-
prise Canal Co., Ltd., Food
Machinery & Chemical Corp.,
Island Irrigation Company, J. R.
Simplot Co., The Lenroot Canal
Co., Lowder Slough Canal Co.,
Ltd., The Martin Canal Co., The
New Lava Side Ditch Co., North
Rigby Irrigation & Canal Co.,
Owners Mutual Irrigation Co.,
Parks & Lewisville Irrigation Co.,
Parsons Ditch Co., Peoples Canal
& Irrigation Co., City of Pocatello,
Poplar Irrigation District, The
Rigby Canal & Irrigating Co., Rudy
Irrigation Canal Co., Sunnydell
Irrigation District, The Trego
Ditch Co., Watson Slough Ditch &
Irrigation Co., Ltd., Wearywick
Ditch Co., West Side Mutual Canal
Co., Woodville Canal Co., and
Palisades Water Users, Inc.

Exhibit E

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JUL 27 1968
Department of Reclamation

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

BURLEY IRRIGATION DISTRICT, et al,

DISTRICT COURT
Plaintiffs, FINDINGS OF FACT

Fifth Judicial District
County of Twin Falls, State of Idaho

vs.

AND

HENRY EAGLE, Watermaster, Water, CONCLUSIONS OF LAW
District No. 36, State of Idaho, by LANCASTER

Defendant.
JUL 10 1968
Clerk
Deputy Clerk

This matter having come on regularly before the Court and it
appearing that the defendant has filed herein a disclaimer of any interest
adverse to the plaintiffs and proof having been submitted in the form of a
Stipulation by all of the plaintiffs and the Court, being fully advised in the
premises, makes and enters the following:

FINDINGS OF FACT

I.

(a) The priority of the right to use waters of the Snake River and
its tributaries with points of diversion at or upstream from Milner Dam
have been determined by decrees of Courts of competent jurisdiction (including
but not limited to the decree in the case entitled Twin Falls Canal Company
v. Charles N. Foster, et al, entered in the District Court of the Fourth
Judicial District Court of the State of Idaho, in and for the County of Twin
Falls on June 20, 1913, hereafter called "Foster Decree") and thereafter
numerous parties have acquired rights to the use of the waters of said
Snake River and its tributaries with points of diversion at Milner Dam or
above.

(b) The parties Plaintiff herein are persons who have so acquired
such water rights and that they have brought this action under and pursuant to
provisions of Idaho Code Section 42-1405.

II.

All the parties Plaintiff herein have accepted as binding upon them

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1 the provisions of all prior decrees which have been entered with respect to the
2 waters of Snake River and its tributaries above Milner Dam, including, parti-
3 cularly, but not limited to (1) The Foster decree mentioned in the preceding
4 paragraph ; (2) The decree entered in the District Court of the Sixth Judicial
5 District of the State of Idaho in and for the County of Fremont in the case
6 entitled Rexburg Irrigation Company, et al, vs. Teton Irrigation Canal Company,
7 et al, filed December 16, 1910, (hereinafter "Rexburg Decree"); and (3) The
8 decree entered in that certain case entitled Woodville Canal Company vs. Clark
9 and Edwards Canal and Irrigation Company, et al, in the District Court of the
10 United States for the District of Idaho, Eastern Division, on June 25, 1929,
11 (hereinafter "Woodville Decree") and all other prior valid decrees of such water.

12
13 III.

14 (a) Defendant, Henry Eagle, is now and has been at all times since
15 March 3, 1959, the duly qualified and acting Watermaster of Water District
16 No. 36 of the State of Idaho; said District being duly created and existing under
17 the laws of the State of Idaho for the purpose of distributing the waters within its
18 boundaries, including all of the waters referred to and affected by this action.

19 (b) All of the lands of the parties Plaintiff hereinafter described
20 are located within the boundaries of, and irrigated by the waters of Snake River
21 and its tributaries within, said Water District No. 36.

22
23 IV.

24 Proper and sufficient notice of the pendency and purpose of the
25 above-entitled action was published in newspapers having general circulation in
26 the counties of Power, Cassia, Minidoka, Twin Falls, Jerome, Blaine, Gooding,
27 Lincoln and Elmore, Idaho, and that all provisions of Idaho Code Section
28 42-1405 relating to notice and publication of notice have been complied with.

29
30 V.

31 The Plaintiffs herein comprise all persons diverting water from,
32 and claiming or asserting rights to divert water from, the Snake River and its
tributaries above Milner Dam and within the boundaries of said Water District

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No. 36, according to the records and files of defendant Henry Eagle; and comprise, collectively, all presently known parties who are or will be affected by the entry of the Decree entered herein.

VI.

(a) Plaintiffs herein have over a period of many years, cooperated, planned and worked for a common, fair, equitable and just plan designed to result in the most efficient, fair and complete beneficial use of all the waters of the Snake River and its tributaries.

(b) Such cooperative planning and adjustment of rights, then, present and future, became and was particularly necessary prior to, and in connection with the planning for the Palisades Reservoir, the securing of Congressional authorization and appropriation for said reservoir and the irrigation projects related thereto and authorized in connection therewith, including particularly, but not limited to, the irrigation project, known as the Minidoka North Side Extension, hereinafter particularly described as being owned and operated by the A & B Irrigation District.

(c) In connection with the establishment of the water rights for said Palisades Reservoir, it was particularly necessary for the parties Plaintiff to agree among themselves, and avoid extensive, expensive and delaying litigation by so agreeing upon a common priority date for those persons who were using, or were making plans to construct projects and perfect rights to use, the so-called "Flood Water Rights," being those waters of the river which were only available during periods of high flow, and which the parties Plaintiff had been using to the best of their ability and to the extent of their irrigation works, or were planning to use as projects were constructed; and that the parties Plaintiff did at such time agree on a common priority date of April 1, 1939, for such rights, which said agreement has been acted upon by all of the parties Plaintiff hereto continuously, and deliveries have been made in accordance therewith by defendant Henry Eagle.

(d) It was also known and agreed that as a result of the construction of Palisades Reservoir, it would be to the best interests of all water users to

1 enter into contracts for the exchange of certain rights between those holding
2 rights in Jackson Lake Reservoir and those holding rights in American Falls in
3 order to reduce river transmission losses and to permit more effective river
4 regulation by permitting the use of waters so far as possible by those having
5 diversions closest to the respective reservoirs.

6 (e) It was also known and agreed that the parties Plaintiff would
7 and they did, enter into specific contracts with the Bureau of Reclamation with
8 respect to their storage rights in Palisades Reservoir, Jackson Lake Reservoir,
9 Island Park Reservoir, Grassy Lake Reservoir, Lake Walcott Reservoir, and
10 American Falls Reservoir and with respect to the acknowledgment and award of
11 certain priorities as hereinafter more specifically set forth.

12 ~~(f) It was necessary to agree that additional projects authorized~~
13 ~~by the Congress of the United States as an integral part of the Palisades~~
14 ~~Reservoir legislation would have their proportionate rights in said so called~~
15 ~~flood water rights with said priority date of April 1, 1939, and that said~~
16 ~~legislation was achieved, and said projects were authorized and constructed, and~~
17 ~~have been developed, on the basis of such understanding as to their water~~
18 ~~rights, and that such projects have used water from the Snake River under such~~
19 ~~claimed priority date as promptly as they were able to do so, dependent upon~~
20 ~~the construction of their facilities.~~

21 (g) It was also known and agreed that it was necessary that the
22 parties Plaintiff achieve a solution of the controversy as to the respective rights
23 of American Falls Reservoir District No. 2 and the other owners of space in
24 American Falls Reservoir which had been left unsettled by the Woodville
25 Decree; and that such settlement has been achieved between the parties Plaintiff
26 and the Bureau of Reclamation by provisions in the contracts as hereinafter more
27 specifically set out.

28 (h) As a necessary condition to the authorization, financing, and
29 construction of the Palisades Reservoir, it was decided that there should be
30 certain savings of winter water to be accomplished by cessation of winter
31 deliveries and with accompanying added storage privileges for the users
32 ceasing such diversion and that this would be needed to be accomplished by

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1 proper contracts with the Bureau of Reclamation, which contracts have been
2 executed.

3 (i) It was further known that it would be necessary to have proper
4 contract provisions to afford the best and most economical use of the waters of
5 the river for storage, both temporary and permanent in the various reservoirs
6 and for mutually compatible, beneficial and non-conflicting uses for power and
7 irrigation, and contract provisions designed to accomplish these purposes have
8 been agreed upon and incorporated into contracts.

9 (j) All of the individual contracts entered into between parties
10 Plaintiff and the Bureau of Reclamation, Department of the Interior, United
11 States of America, were and are designed to be mutually binding upon all
12 parties entering similar contracts, and to be construed together in effect as one
13 overall contract with respect to the common paragraphs therein relating to
14 savings of winter water and accompanying special storage rights; consent to
15 exchanges of American Falls and Jackson Lake storage rights and to the
16 redefinition of those storage rights; temporary storage and exchange of water
17 and releases for power production; and consent to the priority of certain
18 existing and future water rights at Island Park Reservoir and American Falls
19 Reservoir and future reservoirs to be constructed.

20 (k) Since the execution of the Palisades contracts, the operation
21 of the dams, diversion and distribution works of the parties Plaintiff and of the
22 Bureau of Reclamation, Department of the Interior, United States of America
23 has conformed to the general scheme or plan set out herein and has recognized
24 the priorities set out herein.

25 VII.

26 All of the lands described in the Decree, and to which water is
27 therein decreed to be appurtenant, are arid in character and will not produce
28 ordinary agricultural crops without the application of irrigation water; and
29 all of said lands require and need, in addition to all rights presently
30 appurtenant to them, additional water in the amounts set out in the Conclusions
31 of Law; and all of said water has been, can and will be applied to beneficial
32 use in producing agricultural crops thereon.

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VIII.

All of the water rights decreed to the lands described in the Decree herein are and shall be in addition to and supplemental to all other existing water rights appurtenant to said lands; and such additional water rights shall not in any way change, alter, vary, or diminish any and all other water rights possessed or owned by the parties hereto or appurtenant to the said lands.

IX.

All of the parties to this action to whom water rights are decreed have constructed, operated, and now control and maintain all necessary diversion dams, canals, laterals and distribution systems adequate to divert and distribute to the proper lands all of the waters decreed to them, in addition to all other water rights owned by the said parties.

X.

All of the supplemental waters decreed are required for and will be beneficially used for the production of agricultural crops and associated domestic uses upon the lands to which they are decreed and have been used and will be beneficially used in such manner and such supplemental waters shall not be transferrable to any lands other than those lands described in the Decree.

XI.

Some of the rights decreed have been acquired by or decreed to the parties Plaintiff in other proceedings or by other methods, and it is the desire of the parties Plaintiff hereto that all of such rights be enumerated and decreed in this action, in which all parties in interest in waters of Snake River above Milner Dam are parties.

It will greatly aid and assist all responsible State officials, Watermasters and other officials in handling, managing and distributing the waters of the Snake River and its tributaries above Milner Dam to have those rights enumerated and listed in one decree as is intended to be accomplished by this action.

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XII.

The award of the so-called flood water rights to parties Plaintiff to this action claiming them with a uniform priority date of April 1, 1939, will not injure or impair the rights of any other parties and is intended to be a valid and binding settlement of all the claims of the right, title, and interest of the various parties Plaintiff herein and to the said waters.

XIII.

(a) The contracts entered between various of the parties Plaintiff and the United States of America, Bureau of Reclamation, in connection with the Palisades and other projects, as amended and modified, were intended to be, and should be, binding upon all persons claiming rights to the use of the waters of Snake River and its tributaries above Milner Dam; and although the provisions of said contracts provide the basis of a common plan for the administration of the waters of Snake River, certain paragraphs of said contracts, common to all types of contracts with the various parties Plaintiff, contain the major areas of agreement.

Typical examples of the common paragraphs setting forth the major areas of agreement are attached to the Decree herein. A typical example of the common paragraph relating to "Saving of Winter Water; Special Storage Right" is thereto attached as Exhibit A. A typical example of the paragraph relating to "Permanent Exchange of the American Falls and Jackson Lake Storage Rights and Redefinition of Storage Rights" is thereto attached as Exhibit B. A typical paragraph relating to "Temporary Storage and Exchange of Water; Release of Jackson Lake and Palisades for Power Production" is thereto attached as Exhibit C. A typical paragraph relating to "Priority of Certain Existing and Future Water Rights" is thereto attached as Exhibit D.

(b) During the negotiation of the contracts entered between the various parties Plaintiff and the United States of America, Bureau of Reclamation, referred to immediately above, it was necessary to make special arrangements with the Minidoka Irrigation District for the purpose of effecting annual exchanges of water, as well as fixing the carry-over rights of said

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1 district in connection with Jackson Lake storage. Since the majority of the
2 contracts referred to immediately above had already been executed, and because
3 the contract finally executed by the United States of America, Bureau of
4 Reclamation, and the Minidoka Irrigation District, setting forth these special
5 arrangements required agreement and confirmation by all of the various parties
6 Plaintiff, it was then necessary that each contract be amended and supplemented
7 so as to confirm these appropriate provisions of the Minidoka Irrigation District's
8 contract. The contracts as amended and supplemented provide the basis of a
9 common plan for the orderly administration of the waters of the Snake River
10 above Milner Dam. The pertinent paragraphs of the contract entered by the
11 United States of America, Bureau of Reclamation, and the Minidoka Irrigation
12 District, the contents of which paragraphs were confirmed by all other various
13 parties Plaintiff in amendatory and supplemental contracts, are attached to the
14 Decree herein as Exhibit E.

15 (c) In addition to the contracts entered between the various parties
16 Plaintiff and the United States of America, Bureau of Reclamation, referred to
17 above, a Memorandum of Agreement between the Bureau of Reclamation and the
18 Bureau of Indian Affairs was executed, setting forth special provisions relating
19 to the water supply for the Michaud Division of the Fort Hall Indian Reservation,
20 Idaho; by which Memorandum of Agreement, the Bureau of Indian Affairs agreed
21 to be bound by those common provisions of the contracts of the various parties
22 Plaintiff so that the Snake River above Milner Dam could be successfully and
23 efficiently administered. The most pertinent paragraphs of this Memorandum
24 of Agreement are attached to the Decree herein as Exhibit F.

25 Based on the foregoing Findings of Fact, the Court makes and
26 enters the following:

27 CONCLUSIONS OF LAW

28 I.

29 The following parties are entitled to divert and use the waters of
30 the Snake River in the amounts and with the priority dates listed, which water
31 shall be diverted at the point and be appurtenant to the lands described in the
32 Decree made and entered of even date herewith:

8-
MAY 13 1996

1 A. TWIN FALLS CANAL COMPANY

2 Twin Falls Canal Company shall have the right to divert and use
3 600 cubic feet per second (being the right recognized in paragraph 6 of the
4 Woodville Decree) with a priority date of December 22, 1915.

5 B. NORTH SIDE CANAL COMPANY

6 North Side Canal Company shall have the right to divert and use
7 300 cubic feet per second (being the right recognized in paragraph 6 of the
8 Woodville Decree) with a priority date of December 23, 1915.

9 C. NORTH SIDE CANAL COMPANY

10 North Side Canal Company shall have the right to divert and use
11 1260 cubic feet per second (being the right recognized in paragraph 7 of the
12 Woodville Decree) with a priority date of August 5, 1920.

13 D. AMERICAN FALLS RESERVOIR DISTRICT NO. 2

14 American Falls Reservoir District No. 2 is entitled to have the
15 right to divert as natural flow during each irrigation season under water
16 license No. 15134, having a March 30, 1921, priority, as follows: From May 1
17 of each irrigation season continuing during that season so long as there is
18 natural flow available for that priority, the first 1,700 cubic feet per second of
19 flow to be available one-half (1/2) to American Falls Reservoir District No. 2
20 and one-half (1/2) to American Falls Reservoir, except that in any year in
21 which American Falls Reservoir is full to capacity on April 30 or fills after that
22 date, taking into account any water that may be temporarily stored to its credit
23 in upstream reservoirs, all water diverted by American Falls Reservoir
24 District No. 2 within the maximum of 1,700 cubic feet per second during the
25 year prior to the initial storage draft on American Falls Reservoir after the
26 reservoir finally fills in that year shall be considered as natural flow under
27 water license No. 15134. Nothing herein shall prevent American Falls
28 Reservoir District No. 2 from diverting water under said license prior to
29 May 1 of a given irrigation season but all such diversions shall be charged as
30 storage in the event the reservoir is not full on April 30 of that season or does
31 not fill after April 30 of that season.

RECORDED
MAY 13 1996

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

5
6 II.

7 The following parties are entitled to divert and use, pro rata, the
8 waters of the Snake River in the amounts listed, with the same priority date of
9 April 1, 1939, which water shall be diverted at the point and be appurtenant to
10 the lands described in the Decree made and entered of even date herewith:

11 A. BURLEY IRRIGATION DISTRICT

12 The Burley Irrigation District shall have the right to divert and use
13 163.4 cubic feet per second.

14 B. MINIDOKA IRRIGATION DISTRICT

15 The Minidoka Irrigation District shall have the right to divert and
16 use 266.60 cubic feet per second.

17 C. MILNER LOW-LIFT IRRIGATION DISTRICT

18 The Milner Low-Lift Irrigation District shall have the right to
19 divert and use 121.00 cubic feet per second.

20 D. TWIN FALLS CANAL COMPANY

21 The Twin Falls Canal Company shall have the right to divert and
22 use 180 cubic feet per second.

23 E. CLARENCE TILLEY

24 Clarence Tilley shall have the right to divert and use 7.0 cubic
25 feet per second.

26 F. WILLIAM KENDALL

27 William Kendall shall have the right to divert and use 4.00 cubic
28 feet per second.

29 G. FALLS IRRIGATION DISTRICT

30 The Falls Irrigation District shall have the right to divert and use
31 125.00 cubic feet per second.

32 H. A & B IRRIGATION DISTRICT

The A & B Irrigation District shall have the right to divert and use
267.00 cubic feet per second.

MAY 13 1996

1 I. OTIS ORTON

2 Otis Orton shall have the right to divert and use 4.00 cubic
3 feet per second.

4 III.

5 The contracts between the individual parties and the United States
6 of America, Bureau of Reclamation, and the Memorandum of Agreement between
7 the Bureau of Indian Affairs and the Bureau of Reclamation are valid and binding
8 upon the parties thereto, and constitute a scheme or plan for the administration
9 of the Snake River and as such, are binding upon all persons claiming rights to
10 the use of the waters of the Snake River and its tributaries above Milner Dam.

11 IV.

12 Let Decree be entered accordingly.

13 Done this 10th day of July, 1968.

14 S. Theron W. Ward
15 District Judge

16
17
18 State of Idaho } ss.
19 County of Twin Falls }

20 I hereby certify the foregoing to be a full, true and correct
21 copy of the original on file in the above entitled action.

22 E. A. LANCASTER
23 Clerk of the District Court

24 Quill W. Walsh
25 Deputy

MAY 13 1996

Exhibit F



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

Portland Region
Boise Field Office
P. O. Box 8008
Boise, Idaho 83707

July 25, 1966

PARRY, ROBERTSON & DALY
RECEIVED
JUL 26 1966

A.M.
JUL 26 1966
P.M.
JUL 26 1966

Mr. John Rosholt
Parry, Robertson & Daly
P. O. Box 525
Twin Falls, Idaho

Dear John:

In response to your letter of July 15 concerning the Palisades contracts, I am enclosing a tabulation which shows the contracting entities, the contract numbers, and the contract dates by groupings.

This tabulation, I might add, relates to the original contracts, and as you know all the contracts were supplemented as a result of the rearranged plan in which the Minidoka Irrigation District did not participate in the permanent exchange of Jackson Lake space for American Falls space. Also, as I previously indicated, there were minor adjustments made in the contracts, although none of these adjustments relates to the basic agreements about the saving of winter water, the curtailment of power production at Minidoka Dam, and the adjustments of storage rights among reservoirs.

I agree that it would be a practical impossibility to involve each individual diverter on the river in a modification of the existing decrees. It was for the very reason of ease of administration of the river that it was decided not to contract for space in the Federal reservoirs with individual landowners, but rather they were required to form the Palisades Water Users, Inc. as their spokesman to acquire reservoir rights.

Mr. Holden has indicated to me that he plans to provide a copy of a proposed complaint when it is available but as yet he has not completed it. I would also appreciate having an opportunity to see the product of your efforts in advance of filing, if possible.

Best personal regards.

Sincerely yours,

William Burpee
Field Solicitor

Enclosure

MINIDOKA-PALISADES CONTRACTS

<u>Contract No.</u>	<u>Organization</u>	<u>Contract Date</u>
<u>A Group</u>		
14-06-W-41	Burgess Canal and Irrigating Company, Rigby, Idaho	12/18/52
14-06-W-15	Enterprise Canal Company, Ltd., Rigby, Idaho	12/12/52
14-06-W-30	Harrison Canal and Irrigation Company, Rigby, Idaho	12/12/52
14-06-W-24	Peoples Canal and Irrigation Company, Moreland, Idaho	12/18/52
14-06-W-37	Rudy Irrigation Canal Company, Rigby, Idaho	12/12/52
14-06-W-22	The Lenroot Canal Company, Thornton, Idaho	12/12/52
14-06-W-14	New Sweden Irrigation District, Idaho Falls, Idaho	12/12/52
14-06-W-25	Poplar Irrigation District, Rigby, Idaho	12/18/52
14-06-W-35	Snake River Valley Irrigation District, Shelley, Idaho	12/12/52
<u>B Group</u>		
14-06-W-12	Corbett Slough Ditch Company, Blackfoot, Idaho	12/12/52
14-06-W-32	Dilts Irrigation Company, Ltd., Rigby, Idaho	12/12/52
14-06-W-10	Reid Canal Company, Thornton, Idaho	12/12/52
14-06-W-39	The Blackfoot Irrigation Company, Blackfoot, Idaho	12/12/52
14-06-W-38	The Butte and Market Lake Canal Company, Roberts, Idaho	12/12/52
14-06-W-23	The Trego Ditch Company, Blackfoot, Idaho	12/12/52
14-06-W-33	Idaho Irrigation District, Idaho Falls, Idaho	12/12/52
14-06-W-47	Progressive Irrigation District, Idaho Falls, Idaho	12/18/52
<u>C Group</u>		
14-06-W-34	Lowder Slough Canal Company, Ltd., Rigby, Idaho	12/12/52
14-06-W-11	The Farmers Friend Irrigation Company, Ltd., Ucon, Idaho	12/12/52
14-06-W-42	Sunnydell Irrigation District, Thornton, Idaho	12/18/52
<u>D Group</u>		
14-06-W-20	Clark and Edwards Canal or Irrigating Company, Ltd., Rigby, Idaho	12/12/52
14-06-W-40	Danskin Ditch Company, Blackfoot, Idaho	12/12/52
14-06-W-29	Island Irrigation Company, Lorenzo, Idaho	12/12/52
14-06-W-16	Labelle Irrigating Company, Rigby, Idaho	12/12/52
14-06-W-43	North Rigby Irrigation and Canal Company, Inc., Rigby, Idaho	12/18/52
14-06-W-18	Parks and Lewisville Irrigation Company, Rigby, Idaho	12/12/52
14-06-W-31	Shattuck Irrigation Company, Idaho Falls, Idaho	12/12/52
14-06-W-27	Texas Slough Irrigating Canal Company, Rexburg, Idaho	12/12/52
14-06-W-21	The Butler Island Canal Company, Ltd., Rigby, Idaho	12/12/52
14-06-W-19	The Liberty Park Irrigation Company, Thornton, Idaho	12/12/52
14-06-W-17	The New Lava Side Ditch Company, Blackfoot, Idaho	12/12/52
14-06-W-26	The Rigby Canal and Irrigating Company, Rigby, Idaho	12/12/52
14-06-W-25	The Riverside Ditch Company, Blackfoot, Idaho	12/12/52

<u>Contract No.</u>	<u>Organization</u>	<u>Contract Date</u>
	<u>D Group - continued</u>	
14-06-W-46	Watson Slough Ditch Company, Ltd., and Watson Slough Irrigation Company, Blackfoot, Idaho	12/18/52
14-06-W-50	Wearyrick Ditch Company, Route 2, Blackfoot, Idaho	12/18/52
14-06-W-13	West Side Mutual Canal Company, Box 978, Idaho Falls, Idaho	12/12/52
	<u>Miscellaneous</u>	
14-06-W-36	The Martin Canal Company, Idaho Falls, Idaho	12/12/52
14-06-W-49	Woodville Canal Company, Idaho Falls, Idaho	12/18/52
14-06-W-24	Aberdeen-Springfield Canal Company, Aberdeen, Idaho	10/22/52
14-06-W-59	American Falls Reservoir District, Twin Falls, Idaho	5/13/54
14-06-W-48	Burley Irrigation District, Burley, Idaho	12/18/52
14-06-W-28	North Side Canal Company, Ltd., Jerome, Idaho	12/12/52
14-06-W-60	Twin Falls Canal Company, Twin Falls, Idaho	5/13/54
14-06-W-91	Fremont-Madison Irrigation District, St. Anthony, Idaho	1/9/55
14-06-W-73	American Falls Reservoir District No. 2, Gooding, Idaho	10/14/54
14-06-100-851	Falls Irrigation District, American Falls, Idaho	12/9/55

Exhibit G



UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SOLICITOR

Portland Region
Boise Field Office
P. O. Box 8008
Boise, Idaho 83707

November 28, 1966

PARRY, ROBERTSON & DALY
RECEIVED

NOV 29 1966
A.M. 7:49 10/11/12/1/2/3/4/5/6 P.M.

Mr. John A. Rosholt
Parry, Robertson & Daly
P. O. Box 525
Twin Falls, Idaho

Dear John:

Mr. Eagle has provided me a copy of his letter of November 16 to you concerning the participation of American Falls Reservoir District No. 2 in the proposed proceeding for adjustment of the water right decrees on the Snake River. He indicates that the district is not proposing to be a party to the proceeding.

I have checked with the Bureau of Reclamation office here and they agree that the district would acquire no useful additional water rights by reason of a flood water right prior to the 1939 Palisades storage right. According to the information available to them, the full capacity of the existing Milner Gooding Canal is covered by already existing rights prior to 1939 so far as natural flow is concerned, and therefore the district could not in fact divert any additional water even if it did have an additional right.

I am concerned, however, about omitting this district from the proceeding entirely. One of the principal purposes of the Palisades contracts was to set to rest a long-standing disagreement as to the relationship between the district's natural flow rights and the rights to stored water in American Falls Reservoir. Since this dispute was settled in a manner that affects the storable water accruable to American Falls Reservoir, and since the Palisades contracts indicate there will be an adjustment officially made of this agreement, it appears to me to be in the interest of the district and the other water users to have that district a party to the proceeding. If it is a party, the Bureau will then be in a position to obtain from the State Engineer the adjustment in the priorities required by the contract. If the district does not participate, it could well be that the obtaining of this adjustment

would be more difficult. Contrary to the suggestion in Mr. Eagle's letter that American Falls Reservoir District No. 2 is being overlooked in the river adjudication, it appears to me that one of the principal purposes of the adjudication is to formalize in a final decree fashion the water rights protection agreed to in the Palisades contracts which, of course, are of major benefit to the district.

In view of the foregoing, I would appreciate having your views before any final decision is arrived at that would look towards the omission of American Falls Reservoir District No. 2 as a party to the adjusted decree.

As I have previously indicated to you, we are reviewing the draft of pleading provided to me by your letter of October 10 and hope to have our comments to you within the next few days.

Sincerely yours,

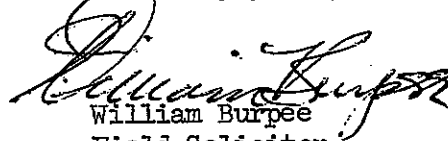

William Burpee
Field Solicitor

Exhibit H



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

Portland Region
Boise Field Office
P. O. Box 8008
Boise, Idaho 83707

DEC 14 1966 PARRY, ROBERTSON & DALY
RECEIVED

Mr. John A. Rosholt
Parry, Robertson & Daly
P. O. Box 525
Twin Falls, Idaho

DEC 15 1966

A-M P.M.
7:8:9:10:11:12:1:2:3:4:5:6

Dear John:

I indicated previously that we would provide you with our comments concerning the proposed draft of complaint forwarded to us by your letter of October 10 relating to a supplemental decree on the Snake River.

According to the information available in this office and that of the Bureau of Reclamation, we have no suggestions with respect to the designations of amounts of water or land descriptions. We think they are accurate and in accordance with the understandings had by all the water users organizations in Water District No. 36, and in accordance with a resolution adopted by the Committee of Nine under date of March 1, 1958.

There are only one or two minor matters that you might like to give consideration to. Some of the Lower Valley organizations do not own the ditches and canals, rather, title is held by the United States. Perhaps it would be appropriate in the interest of accuracy for those organizations to be alleged to be the operator rather than the owner of the system. This could be accomplished by a mere change of words at line 24, page 5, as relates to the Burley Irrigation District; line 1, page 7, as relates to the Minidoka Irrigation District; line 5, page 17, as relates to the Falls Irrigation District; and line 19, page 18, as relates to the A & B Irrigation District. On page 16, paragraph XI, at line 27, the irrigable acreage of the Falls Irrigation District is listed as 6,100 acres. We believe that the land description encompasses 11,240 acres. It is recognized that the Falls includes irrigation from wells, but these wells are on the basis of a water exchange arrangement and it would be appropriate to include the entire acreage in the complaint. On page 25, paragraph II D of Count Four, it is indicated that new storage "shall have a priority date equal to that of Palisades Reservoir." It might be desirable to change these words to "shall be operated as if it had a priority date equal to that of Palisades Reservoir." Such a change

in wording would, I think, be more in keeping with the State priority system in that the court would not be asked to change a priority date itself. Also, on page 26, line 21, the reference should be to Paragraph II instead of Paragraph III.

I have also read the proposed stipulation forwarded by your letter of November 29 and have no suggested modifications to it.

I hope that you have persuaded the attorney and board of directors of American Falls Reservoir District No. 2 to participate in the proceedings. I note that the Fremont-Madison Irrigation District has not been listed as a party. Since that district has an interest in Island Park Reservoir it occurs to me that consideration also ought to be given to including it as a party. I am writing to Mr. Holden concerning this.

In summary, I think the proposed pleadings and proposed stipulation accomplish the objectives of the water users and will serve a very useful purpose in protecting the validity of the water rights of the irrigated lands in the Upper Snake River Valley.

In connection with your preparation of the documents in final form, I would appreciate it if you would provide me with copies of the proposed exhibits A, B, and C, being the Rexburg, Foster, and Woodville decrees. I have never been sure that I have available truly authenticated copies of these documents. The copy of the Woodville decree that I have is a printed document put out by the Times-Register Press, Idaho Falls, which shows that it includes as exhibits to that decree copies of the Foster and the Rexburg decrees which were reaffirmed by the Woodville decree in the form attached as copies. Thus, your exhibits A and B would be duplicated in exhibit C, if I have the right information. Could you advise me?

Sincerely yours,

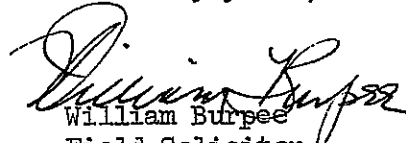

William Burpee
Field Solicitor

Exhibit I



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
Portland Region
Boise Field Office
P. O. Box 8008
Boise, Idaho 83707

IN REPLY REFER TO:

[Handwritten signature]
[Handwritten signature]

SEP 6 1967

PARRY, ROBERTSON & DALY
RECEIVED

SEP 7 1967

AM. 10/10/11/12/13/14/15/16 P.M.

Mr. John A. Rosholt
Parry, Robertson & Daly
P. O. Box 525
Twin Falls, Idaho 83301

Dear John:

In our discussions of the draft Stipulation in the currently pending supplemental adjudication action relating to the decrees on the Snake River, a copy of which Stipulation you provided to me by your letter of August 22, I indicated that I would provide copies of the documents that you might want to give consideration to in preparing the final form of the proposed Stipulation. Accordingly I am enclosing a copy of the 1960 contract with the Minidoka Irrigation District and a copy of the 1957 memorandum of agreement between the Bureau of Reclamation and the Bureau of Indian Affairs relating to the water supply of the Michaud Division of the Fort Hall Indian Reservation.

With respect to the Minidoka Irrigation District contract I call your attention to articles 21 and 22. These articles cover the special arrangements made with the Minidoka Irrigation District for effecting annual exchanges of water, as well as fixing the carryover rights of the district in connection with Jackson Lake storage. Perhaps it would be desirable also to make reference to article 27 which permits the interexchange of stored water in the reservoir system upon consultation with the watermaster and the advisory committee in order to effect the greatest practicable conservation of water. These are the provisions, in addition to the common provisions with all the water users referred to in paragraph XVII in the draft of Stipulation, to which I had reference in our telephone conversation.

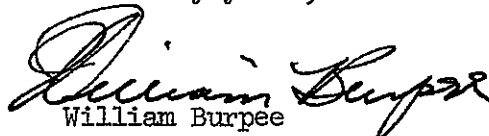
With respect to the agreement pertaining to the Michaud Division of the Fort Hall Indian Reservation, attention is directed to article 8. This article sets out the special provisions under which the irrigated area is limited to 21,000 acres of land, and any amount of water in excess of 22,400 acre-feet averaged over a 10-year period pumped from the ground will be treated as stored water and its availability will be limited to the amount of stored water to which the project is

entitled. A reading of this article will indicate other limitations in connection with the water entitlements of the Michaud Division. Your attention is also directed to article 15, which article is the agreement required by the Act of August 31, 1954, and was a condition precedent to the authority to commence construction of the Michaud Division by the Indian Bureau.

Paragraph XVII could be expanded to include appropriate references to the above indicated articles of these two agreements. It also occurs to me that perhaps in line with the recitations in the draft of the proposed Stipulation indicating that the Palisades contracts were entered into on the basis of a common plan for the administration of the waters of the Snake River, it may be desirable to broaden paragraph XVII to make it applicable to all the provisions of those contracts. I have in mind here particularly the interrelationships between the definitions provisions of the Palisades contracts, the provisions setting up the Committee of Nine as the advisory committee, and the provisions relating to the ordering of water and the handling of complaints. All these arrangements are an integral part of the overall understanding among the water users on the river. By having the Stipulation refer to the entire contracts there would be avoided any future attempt to set up a strained interpretation out of the isolated language used in the provisions pointed up particularly in the decree. I have no strong feeling on this point. I merely raise it for your consideration.

It is hoped that the foregoing will be helpful to you. If we can provide any further information, please let us know.

Sincerely yours,


William Burpee
Field Solicitor

Enclosures 2

Exhibit J

July 9, 1968

Mr. William Burpee
Office of the Solicitor
U. S. Department of Interior
P. O. Box 937
Boise, Idaho

Dear Bill:

Pursuant to our telephone conversation of yesterday, we have amended Exhibit "E" to include all of paragraphs 21 through 24 plus 25, 26, and 27. Paragraphs 25 and 26 were included merely because it was easier than leaving them out.

I will clear this with Roger Ling, attorney for the Minidoka Irrigation District, before entry of the final Supplemental Decree on July 10th.

I have enclosed a copy of your letter of September 6, 1967, wherein you point out that you felt the only articles we need call attention to were Articles 21, 22, and 27 of the Minidoka Irrigation District contract. This was the guideline I used in attempting to prepare the exhibit in the first instance. Since you now think that Articles 23 and 24 should be included, we will include them.

In addition, we have amended page one of the Findings of Fact and Conclusions of Law, eliminating that portion in parenthesis which recites "and its tributaries" and have adjusted the language in what was formerly lines 23 and 24 in accordance with your suggestions. Find enclosed the new page 1 for Findings of Fact and Conclusions of Law as well as a new Exhibit "E."

In addition, I am enclosing a synopsis of a conference I had with Keith Higginson late last month. This came about at Mr. Higginson's request following the Idaho State Reclamation Association

Mr. William Burpee

Page 2

July 9, 1968

meeting in Idaho Falls last December. At that time he asked Tim Hopkins and myself to work with him in regard to some ideas for changes which he had. We felt that it was probably better to work with him at the beginning than to have some changes proposed which we did not favor. How many of these proposed changes will be finally submitted to the legislature I do not know, but I do feel that the reclamation water users can better be protected by our cooperation than if we were to oppose all changes.

Sincerely,

JOHN A. ROSHOLT

JAR:dp

Enclosures

Exhibit K

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

EXHIBIT A

SNAKE RIVER VALLEY PROJECTS
and
OWYHEE PROJECT

Contract between United States and Idaho Power Company
for conservation of Snake River water and
furnishing transmission service

THIS AGREEMENT, Made this 1st day of October, 1934,
in pursuance of the act of Congress of June 17, 1902 (32
Stat. 388) and acts amendatory thereof or supplementary
thereto, between the UNITED STATES OF AMERICA, hereinafter
styled the United States, acting for this purpose by

T. A. Walters, First Assistant Secretary of the Interior,
and IDAHO POWER COMPANY, a corporation organized under the
laws of the State of Maine but authorized to do business in
the State of Idaho and having its principal place of business
therein at Boise, Idaho, hereinafter styled the Company,
its successors and assigns,

WITNESSETH That;

WHEREAS, for the purpose of enabling the United States
to build a dam and storage reservoir and power plant on
Snake River at American Falls, Idaho, the parties hereto
entered into a certain contract under date of June 15, 1923,
hereinafter referred to as the 1923 contract, whereby the
Company conveyed to the United States certain real property,
two certain power plants and all the water rights, approp-
riations, water filings and permits at American Falls,
Idaho, except those certain rights expressly reserved to the
Company, as in said contract set forth; and

WHEREAS, the parties hereto entered into a certain
temporary contract under date of April 23, 1929, herein-
after referred to as the 1929 contract, whereby provision
for the winter release of water in American Falls reservoir
was made which contract expires October 1, 1938; and

WHEREAS, during several years since the construction
of said dam and reservoir there has been a shortage of
water available for filling said reservoir and for irri-
gation purposes from Snake River; and

WHEREAS, to meet possible future like emergencies arising from extreme low water years, various plans to effect a greater conservation of Snake River water to be impounded in said reservoir to be used for irrigation purposes have been proposed and considered; and

WHEREAS, the Company has electric power plant and generating facilities at said American Falls on Snake River with an approximate capacity of 27,000 kilowatts, and the United States has an electric power plant and generating facilities at Minidoka Dam below American Falls on Snake River, with an approximate capacity of 10,000 kilowatts; and

WHEREAS, one of the plans proposed for conservation of Snake River water for storage and irrigation purposes was for the construction of a power plant with a 7,500 kilowatt generating unit by the United States at American Falls; and

WHEREAS, the Company has proposed to furnish power from its present facilities to be utilized in connection with the use of the present facilities of the United States at Minidoka, Black Canyon and Diversion in such way as will effect a conservation of water in said reservoir for storage and irrigation purposes; and

WHEREAS, the construction of such a power plant by the United States at American Falls is embraced within the original plans and specifications for the construction of the American Falls reservoir to be utilized for the purpose of more nearly insuring that the American Falls reservoir will fill from year to year and also provide such additional power as may be needed; and

WHEREAS, after careful study and consideration it has been determined that conservation of Snake River water for summer irrigation purposes in substantially greater amounts than could be accomplished by the construction of such new units at American Falls may be immediately effected by co-ordinated use of the present plant facilities of the Company and of the present plant facilities of the United States; and

WHEREAS, the plan proposed for the coordinated use of such facilities is seemingly both practicable and feasible and will not only effect a substantial conservation of water in the American Falls reservoir for irrigation purposes but will supplement the power requirements of Minidoka project;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

A 1. The Company shall be permitted to use for power at American Falls during the period of this agreement any water in addition to its own released from American Falls reservoir,

2. The release of the Two Hundred Fifty Five Thousand (255,000) acre-feet of the water reserved to the Company under paragraph 19 of the 1923 contract being a part of the water for which regulation and control is provided in paragraph 18 of said contract shall hereafter during the life of this agreement as herein provided be subject to the direction and limitation of the Bureau of Reclamation provided there shall be released such portion of said Two Hundred Fifty Five Thousand (255,000) acre-feet of water as may be necessary to make the total flow at the head of Shoshone Falls as provided and prescribed in paragraph 21 of the 1923 contract, except that the amounts so released each year shall not exceed during the term of this agreement, the amounts that may be necessary to make during the term of this agreement, the total flow at the head of Shoshone Falls:

790	second-feet,	October 1	to November 30, inc.
870	" "	December 1	to January 31, inc.
790	" "	February 1	to February 12, inc.
690	" "	February 13	to March 15, inc.,

with no further requirement for the release of said water over Milner Dam between March 16th and June 10th inc., exclusive, however, of any part of the Company's Forty Five Thousand (45,000) acre-feet of primary storage, and the water referred to in the last sentence of paragraph 10 of the 1923 contract. For the sole purpose of preserving to the Company the right it might otherwise have to the use of the Two Hundred Fifty Five Thousand (255,000) acre-feet of water, it is agreed that the whole of said Two Hundred Fifty Five Thousand (255,000) acre-feet of water shall be released from American Falls Reservoir once during each five year period (or once during such lesser or other period as the Idaho statutes relating to abandonment of rights to the use of water may provide) for use at the American Falls plant of Company but at such times and in such manner as the officers of the United States in charge of American Falls Reservoir shall deem least detrimental to irrigation and provided that once in said five year period or said lesser or other period there shall be released an amount of water sufficient to preserve to the Company the right to make the total flow at the head of Shoshone Falls in the amounts and at the times as prescribed and specified in said paragraph 21.

3. For the period from October 1 of each year to April 1 of the following year after the United States plant at Minidoka Dam has generated such energy as is available from the efficient use of the water available at said plant during such period then the Company agrees to deliver at approximately 132 k.v. at said Minidoka Power Plant from its power plant at American Falls or other of its power plants in Idaho such power and energy as is necessary to meet the power demands and uses on the Minidoka project, provided that the Company shall not be obligated in any event to furnish power hereunder during said period in an amount which will make the total power available to the Minidoka project from the Company and from the Minidoka Power Plant exceed the 10,000 k.w. of winter power provided for in paragraph 23 of the 1923 contract. In consideration of the benefits which will inure to Company by the United States forbearing to construct a power plant at American Falls at the time of entering this contract and the Company being permitted to use through its power plant at American Falls during the period of this agreement such water in addition to its own as may be released from the American Falls reservoir until such time as the United States may construct and place in operation a power plant at American Falls and the furnishing of certain power and energy by the United States to the Company and the indirect benefits that will inure to the Company by the conservation of water in American Falls reservoir and the other benefits accruing to the Company under this agreement, no charge shall be made under this agreement for the power and energy so furnished during the non-irrigating season.

B As a part of this agreement and to meet the other increase in power demands and uses on the Minidoka project, the Company will furnish power and energy to the United States at approximately 132 k.v. delivered at Minidoka power plant for use on said Minidoka project as follows:

At such time and as often as may be required during the months of April to September inclusive up to 7,500 k.w. of which the power to be furnished over 4,000 k.w. is understood to be breakdown power only. By breakdown power as used herein is meant power furnished by the Company in excess of 4,000 k.w. to replace power temporarily lost or unavailable on account of a breakdown or interruption in operation of some part of the Minidoka power plant.

In consideration of the other benefits received by the Company under this agreement breakdown service will be furnished by the Company upon the payment by the United States of \$2.00 per hour for the first 720 hours in each calendar year and for each hour thereafter in such calendar year

United States will pay \$4.00 per hour. No money payments shall be made for power furnished by the Company except for breakdown service.

B-1 The present Black Canyon contract under date of April 10, 1930, between United States and this Company is extended to run concurrently with this agreement, provided that the United States shall deliver to the Company under said Black Canyon contract all the Black Canyon power and energy available in excess of that power and energy now specifically reserved under said contract when used for construction and other purposes, including operating purposes at Owyhee Dam and Tunnel Canyon, and in excess of the power and energy being used by irrigation customers now served by the United States from said Black Canyon plant, except that the United States shall have the option to furnish power and energy to Owyhee Ditch pumps and to the Payette Division of the Boise Project; also additional power to enlargements of and additions to the Payette-Oregon Slope pumping plant equal to the requirements of the Crystal Irrigation District, Bench Irrigation District, the Slide Irrigation District; also the requirements of the North and South Advancement pumps, provided that in the case of such Advancement pumps the United States Bureau of Reclamation shall install transformers to receive power from Company's present distribution lines, which latter provision is in addition to the transmission provisions of the present Black Canyon contract, provided in each instance above set forth other than the irrigation customers now served by the United States from the Black Canyon plant an equivalent reduction is made in the demands and uses of the Gem Irrigation District; however, for the seasons of 1935 and 1936 the requirements of Owyhee Ditch pumps and Advancement pumps may be supplied from a reduction in the demands of the Ontario-Nyssa pumps. And in addition thereto, the United States shall deliver to Company all power and energy available from the present Minidoka power plant not required for power demands and uses on said project, except the power used at Albion, or in the event of enlargement of said plant, then from a capacity equal to the capacity of said present plant.

C Unless terminated in the manner hereinafter provided, this agreement shall remain in force and effect until such time as the United States, its assigns, permittees or licensees shall construct, and place in operation a power plant at American Falls and the United States shall give Company at least sixty days' notice at its office at Boise, Idaho, of the date on which any such plant shall be placed in operation, provided that this agreement may be terminated

by the United States at any date after five years from the effective date provided in *G* hereof by giving written notice to the Company at least two years prior to such date of termination and may be terminated by the Company at any date after 25 years from the said effective date hereof by giving written notice to the Secretary of the Interior at least ten years prior to such date of termination; and Provided further, that the Secretary of the Interior may terminate this agreement at his option at any time, by giving the Company six months' written notice, in the event of a final court decision or final court decisions (1) holding (1) that the Secretary cannot lawfully secure an annual net income of \$50,000 to reimburse the United States for the use of the Black Canyon plant by assessments or charges as an item of reservoir operation and maintenance cost against the parties who are benefited by the water saved hereunder, and also holding (2) that the Secretary cannot lawfully secure such income by sale of the power furnished under Article 3 and Section B thereof, to the Minidoka Irrigation District; or (B) holding that the Secretary may not discontinue or reduce the non-irrigation season use of the power plant at Minidoka Dam in order to conserve the flow of Snake River for storage, for the purpose of irrigation, in the American Falls Reservoir for the benefit of the contracting parties therein, and in the proposed reservoir in the North Fork, if and when it is built. The United States, its assigns, permittees or licensees shall not within 5 years from the date of this agreement construct and/or place in operation additional generating facilities at Minidoka Dam for any purpose other than supplementary to the present facilities thereat in furnishing the power demands and uses on the Minidoka Project. During the life of this agreement the United States will not sell power from its Minidoka Project power system outside of the Minidoka Project in excess of an amount of power 850 kw less than the amount generated from the additional power unit or units hereafter installed at the Minidoka Dam except the power furnished at Albion.

D In effecting the necessary conservation of water at American Falls Reservoir and thus aiding in carrying out both the letter and spirit of this agreement, the Company and the United States agree to effect, so far as practicable, a closely coordinated and synchronized operation of their respective plants. In case of breakdown the United States agrees to restore its plant or plants to full operating condition with all possible diligence so far as consistent

with ordinary construction methods and laws and regulations applicable to Government work.

E This agreement shall not alter, amend or affect in any way the terms and conditions of the 1923 contract, except in so far as the release by American Falls and Milner Dam of the Two Hundred Fifty Five Thousand (255,000) acre-feet of water reserved to the Company under paragraph 19 of the 1923 contract, being a part of the water for which regulation and control is provided in paragraph 18 of said contract, is changed as herein specified for the duration of this agreement nor constitute or be construed as a release, surrender or abandonment of any of the Company's power or water rights.

F The 1929 contract shall be suspended during the term of this agreement.

G This agreement shall take effect October 1, 1934, and shall continue in effect as above provided until terminated in the manner hereinbefore provided.

H Nothing in this contract contained shall be or constitute a release, surrender or abandonment by the United States or any of its rights to use of water for power purposes at the Minidoka Power plant nor a release, surrender or abandonment by the United States of any rights acquired by construction of the American Falls reservoir.

I It is agreed that the water conserved and made available by the terms of this agreement is for storage in the American Falls Reservoir except the water saved by the Company's release of the right to have water discharged over Milner Dam which water may be stored in the North Fork Reservoir if built and is in lieu of water that would otherwise be conserved and so stored by the construction of the said generating unit at the American Falls Reservoir and shall inure to the benefit of all parties interested in American Falls Reservoir in like manner and extent.

J This agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Company and also upon the successors and assigns of the United States.

K 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 which may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

IN WITNESS WHEREOF, the parties hereto have signed
their names the day and year first above written, said
Company acting in pursuance of a resolution of its Board
of Directors duly adopted May 9th, 1935.

UNITED STATES OF AMERICA

BY T. A. Walters
First Assistant Secretary of the Interior.

IDaho POWER COMPANY

BY K. M. Robinson
President

(SEAL)

Attest:

James L. Roone
Secretary.

Exhibit L

Symbol Ilr-733

C O N T R A C T

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

Dated June 15, 1923.

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

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

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

2. Purpose and Plans of United States.

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

3. Company Public Service Corporation.

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

4. Interference with Rights of Company.

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

5. Use of Property Owned by Company.

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

6. Company's Prior Filings at American Falls.

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

44. to the company under this contract.

7. Need of United States for Power.

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

8. Mutual Covenants.

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

9. Property to be Conveyed to United States.

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

67. constructed by the United States in connection with the
68. American Falls Reservoir project; the said proposed dam
69. to be located and constructed upstream from the company's
70. American Falls Dam as now constructed and north of the
71. right of way of the Oregon Short Line Railroad Company's
72. bridge property as now located at American Falls; the ti-
73. tle to be conveyed to the United States in all cases to be
74. as full and complete as title as the company has, Provided,
75. however, that to the extent hereinafter expressly provided
76. and to no greater extent than hereinafter expressly
77. provided, and subject to all the terms, conditions and
78. provisions hereinafter set out, the Company shall have and
79. there is reserved to the Company, the right to store the
80. water which it is to receive from the Proposed American Falls
81. Reservoir, upon that part of the property and rights describ-
82. ed in Paragraph 9, located within the reservoir, and agreed
83. to be conveyed by the Company to the United States insofar
84. as such reservation to the Company does not conflict with any
85. of the rights hereinafter granted or agreed to be allowed to
86. the United States or any of the limitations or restrictions
87. hereinafter agreed to be placed upon the rights of the Company.

88. (b) The two power plants at American Falls known as
89. the Island Power plant and the West Side plant, except as to
90. the water rights otherwise provided for in this contract to-
91. gether with the following described tracts of land on which
92. said plants are located, to-wit:

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

119. United States and the Company.

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

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

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

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

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

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

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

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

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

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

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

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

12. Company's Additional Summer Power Right.

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

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

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

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

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

372. for such day.

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

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

15. Outlet Works and Division Dam for Company

391. The United States will provide for the company in the
392. proposed dam to be constructed by the United States discharge
393. works sufficient for a 5,000 second-feet delivery with a
394. loss of head not to exceed two feet. Such discharge works
395. shall discharge into the pool between the proposed reservoir

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

15. Company's Primary Storage Capacity.

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

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

17. Operation and Maintenance Charges

433. For the purpose of determining the operation and main-
434. tenance charge to be paid by the company, each acre-feet of
435. secondary storage capacity provided for in Paragraph 13 shall
436. be considered as the equivalent of 7/20 (seven-twentieths)
437. of an acre-foot of primary storage capacity and the company
438. will pay to the United States each year a proportionate part
439. of the total cost of operation and maintenance of the reser-
440. voir, and distribution of the waters therefrom to the head
441. of the ditches and to the power plants of the company di-
442. verting water from Snake River below said reservoir in the
443. proportion that 134,250 acre-feet is of the total available
445. capacity of the reservoir plus 89,250 acre-feet, the times,
446. conditions, and manner of billing or stating such charge to

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

18. Company's Secondary Storage Capacity.

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

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

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

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

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

20. Company Right to Primary Storage Water.

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

21. Company's Rights below Milner Dam

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

522. tioned in Paragraph 18 as is needed for beneficial use for
 523. power development at Shoshone Falls or Twin Falls but not
 524. exceeding the amount that may be necessary to make the
 525. total flow at the head of Shoshone Falls:
 526. 790 second-feet October 1st to November 30th, incl.
 527. 890 " " December 1st to January 31st, "
 528. 790 " " February 1st to February 12th, "
 529. 690 " " February 13th to April 15th, "
 530. 790 " " April 16th to June 10th, "
 531. exclusive of any part of the company's said 45,000 acre-feet
 532. of primary storage and the water referred to in the last
 533. sentence of Paragraph 10.
 534. Provided, however, that the amount of water released
 535. past Milner for maintaining the flow at Shoshone Falls be-
 536. tween October 1st and June 10th inclusive, as listed above,
 537. shall be a part of the 255,000 acre-feet of primary storage
 538. water which the Company may have stored in its secondary
 539. storage capacity in the reservoir, and provided that it re-
 540. leases such water from the American Falls Reservoir in such
 541. a way that the required flow can be maintained at Shoshone
 542. Falls by the utilization of storage capacity in Lake Walcott not
 543. to exceed 3,000 acre-feet of storage capacity.
 544. Nothing in this paragraph is to be construed as abridg-
 545. ing the Company's right to release from the Reservoir and
 546. have passed by Milner at any time any part of its 45,000
 547. acre-feet of primary stored water stored in its primary
 548. storage capacity, or held over as provided for in Paragraph
 549. 20.

10. Company's Primary Summer Power Right.

274. It is agreed and understood that the company reserves
275. and it shall have as against the United States and those
276. claiming or that may hereafter claim under them, the first
277. or primary right at American Falls to use for power purposes
278. at American Falls the following amounts of water during the
279. following periods of each year:

280. 100 second-feet beginning April 1st, increasing uniformly
281. to 2500 second-feet on May 1st, and continuing at that
282. amount to September 15th inclusive, then decreasing uniformly
283. to 100 second-feet on October 31st and none except as here-
284. inafter provided from November 1st to March 31st inclusive.

285. The above described power right so reserved to the com-
286. pany shall be considered as prior and superior to all other
287. rights at American Falls. The company may also have a pri-
288. mary right to use at any time any water brought to American
289. Falls by it from beyond the Snake River water shed, or any
290. stored water acquired by the company from storage capacity
291. hereafter constructed above American Falls provided that it
292. is understood and agreed that the company's right to store
293. water, except water brought by the company from beyond the
294. Snake River watershed, in such capacity above American Falls
295. shall be inferior and subordinate to the right of the United
296. States to provide for building and to fill and use 3,000,000
297. acre-feet of storage capacity, including the capacity of the
298. American Falls Reservoir anywhere on Snake River in addition
299. to the storage capacity now available in Jackson Lake Reser-
300. voir and Lake Walcott.

22. Twin Falls Power Site.

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

23. Government's Winter Power Rights.

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

24. Storage Rights of United States and Winter Waste.

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

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

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

25. Release of Liens.

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

26. Abstract.

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

626. deducted from the purchase price.

27. Payments by the United States.

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

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

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

704. ation upon which to base this agreement.

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

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

29. Distribution System in American Falls.

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

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

30. Reservation in Deed of Reserved Rights.

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

31. Failure of Appropriation.

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

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

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

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

778. be furnished to the company the United States shall not
779. be liable in damages for failure to provide such storage
780. capacity.

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

781. It is the understanding and intent of the parties
782. that the storage capacity rights herein granted to the
783. company shall be vested rights in it but that if by change
784. of Law, a court or commission decision or in any other way
785. than by errors or inaccuracies in delivery or release
786. of water from the reservoir the company shall be refused or
787. denied the right to and use of said capacity or any thereof,
788. the Company shall be entitled to recover the damages which
789. it may suffer, and to such other relief as a court of
790. competent jurisdiction may adjudge the Company entitled to
791. under the terms of this agreement and the situation of the
792. parties, but in case of any errors or inaccuracies in the
793. delivery or release of water the company shall have and
794. be limited to the same rights and redress as provided for
795. the Irrigation Companies and Districts in the contracts,
796. the form of which is attached hereto and marked Exhibit "C",
797. between the United States and the Irrigation Companies and
798. Districts cooperating with the United States in the con-
799. struction of the Reservoir.

33. Liens and Incumbrances.

800. Liens or incumbrances existing against said premises
801. and of which the company agrees to secure the release, may

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

34. Effective when Signed By the Secretary.

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

35. Binding on Successors and Assigns.

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

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

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

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

37. Cooperation with reference to Water Rights.

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

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

38. Agency Clause.

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

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

39. Member of Congress Clause.

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

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

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

UNITED STATES OF AMERICA

By (Sgd) Hubert Work
Secretary of the Interior

IDAHO POWER COMPANY

By (Sgd) F. F. Johnson
President

(Seal)

ATTEST:

(Sgd) Clarence T. Ward
Secy.

(Seal)

Approved except as to Exhibit "C"

(Sgd) W. G. Swendsen
Commissioner of Reclamation

Exhibit M

IN THE DISTRICT COURT OF THE TWELFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

ABERDEEN-SPRINGFIELD CANAL COMPANY,
a corporation, et al.,

Plaintiffs,

vs.

HENRY EAGLE, Watermaster, Water
District No. 36, State of Idaho,

Defendant,

STATE OF IDAHO, DEPARTMENT OF RECLA-
MATION, ex rel. R. Keith Higginson,
State Reclamation Engineer,

Applicant for Intervention.

Civil No. 6117

DISCLAIMER

COMES NOW, HENRY EAGLE, Watermaster of Water District
No. 36, State of Idaho, by and through his attorneys of record,
Allan G. Shepard, Attorney General of the State of Idaho, and
William D. Collins, Assistant Attorney General of the State of
Idaho, and states that he has no right adverse to and disclaims
any and all interest adverse to the claims by the Plaintiffs in
this action, and that he will abide by and consider as binding
upon him the decree of the court as entered in this action.

DATED this 9th day of July, 1968.

ALLAN G. SHEPARD
Attorney General
State of Idaho
Statehouse
Boise, Idaho

/s/ William D. Collins

WILLIAM D. COLLINS
Assistant Attorney General

/s/ Henry C. Eagle

HENRY EAGLE
Watermaster, Water District No. 36
State of Idaho

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of July, 1968,

I served the Annexed **DISCLAIMER** upon:

Parry, Robertson & Daly
Attorneys at Law
Fidelity National Bank Building
Twin Falls, Idaho 83301

Nielson & Nielson
Attorneys at Law
P. O. Box 367
Burley, Idaho 83318

Holden, Holden & Kidwell
Attorneys at Law
Idaho First National Bank Building
Idaho Falls, Idaho 83401

James, Hobdey & Shaw
Attorneys at Law
P. O. Box 176
Gooding, Idaho 83330

Roger D. Ling
Attorney at Law
Toebling Building
Rupert, Idaho 83350

by placing a true and correct copy of the same in the United States mail, postage prepaid, addressed to each of the above listed attorneys.

/s/ William D. Collins
WILLIAM D. COLLINS
Assistant Attorney General
State of Idaho

Exhibit N

COPY

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID I. STANISH (ISB #7310)
MICHAEL C. ORR (ISB #6720)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

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. 01-00217, 01-00218, 01-02017, 01-02032,
	)	01-02046, 01-02064, 01-02068, 01-04024, 01-04025, 01-
	)	04054, 01-10382, 01-10383, 01-10531, 01-10532, 37-
	)	00238A, 37-00239A, 37-00239D, 37-00240A, 37-
Case No. 39576	)	00240D, 37-00447C, 37-00447D, 37-00507, 37-00607D,
	)	37-00608D, 37-00856, 37-00859A, 37-01175A, 37-02128,
	)	37-02471, 37-02472, 37-02778, 37-02780, 37-04007, 37-
	)	04112, 37-04147, 37-04241, 37-07108, 37-07754, 37-
	)	07857, 37-07865, 37-07920, 37-07922, 37-07944, 37-
	)	11131, 37-20709, 37-20710, 37-21595, and 63-00367.
	)	
	)	STATE OF IDAHO'S RESPONSE IN OPPOSITION TO
	)	THE IDAHO POWER COMPANY'S MOTION TO
	)	DESIGNATE BASIN-WIDE ISSUE, OR
	)	ALTERNATIVELY, TO CONSOLIDATE SUBCASES
	)	ON COMMON ISSUE

The State of Idaho, by and through the undersigned deputy attorney general, hereby files
its Response in Opposition to the Idaho Power Company's Motion to Designate Basin-Wide

STATE OF IDAHO'S RESPONSE IN OPPOSITION TO THE IDAHO POWER COMPANY'S MOTION TO
DESIGNATE BASIN-WIDE ISSUE, OR ALTERNATIVELY, TO CONSOLIDATE SUBCASES ON COMMON
ISSUE

Issue, or Alternatively, to Consolidate Subcases on Common Issue.

I. DISCUSSION

On August 28, 2007, the United States filed a motion to consolidate 17 subcases based upon the inclusion of, or potential inclusion of, an explanatory remark that requires affected hydropower rights to operate "in a manner that recognizes the historic practice that the use of water for power generation is incidental to the rights of others to the use of water for other purposes."

On September 5, 2007, the Idaho Power Company filed its status conference report in subcase nos. 37-02128, 37-02471, 37-02472, 37-20709, and 37-20710; attached thereto, the Idaho Power Company filed a motion to designate a new basin-wide issue, or alternatively, to consolidate the above-entitled 48 subcases, including those involved in the United States' August 28 motion. The Idaho Power Company asserted a broader, more general issue for consideration:

Can historic practice regarding use or administration of a water right deny a party's right to enforce a senior priority?

Both motions are now set to be heard on October 16, 2007. This *Response* addresses the Idaho Power Company's motion only; the United States' motion is addressed in a separate pleading.

A. THE COURT SHOULD NOT DESIGNATE THE PROPOSED ISSUE AS A BASIN-WIDE ISSUE

SRBA Administrative Order 1 sets forth the criteria to be considered in designating a basin-wide issue: (i) why the issue is broadly significant and is better resolved at a basin-wide level; (ii) the need for its early resolution; and (iii) the type of rights affected by the issue and how those rights will be affected. AO1 § 16(1)(b)–(e).

The proposed issue should not be designated as a basin-wide issue for the following

STATE OF IDAHO'S RESPONSE IN OPPOSITION TO THE IDAHO POWER COMPANY'S MOTION TO DESIGNATE BASIN-WIDE ISSUE, OR ALTERNATIVELY, TO CONSOLIDATE SUBCASES ON COMMON ISSUE

reasons: First, the proposed issue does not involve a common issue of law; it involves fact-specific legal and equitable determinations that are neither broadly significant nor better resolved at a basin-wide level. Second, designation of the proposed issue will only hinder resolution of the rights affected, some of which would have already been resolved to finality but for the imposition of the Idaho Power Company's motion.

i. The Proposed Issue Does Not Involve a Common Issue of Law, but Rather, It Involves Fact-Specific Determinations of Underlying Legal and Equitable Theories

The Idaho Power Company's characterization of the phrase "historic practice" as raising a common issue of law across these factually-unrelated subcases is misplaced. The only thing common to all of these subcases is the involvement of the historic practice language. The language itself, however, is merely a textual manifestation of independent legal and equitable theories satisfied by independent factual circumstances; it is not itself a term of art. Thus, while different recommendations and objections may invoke the use of this phrase, the legal and equitable foundations in support of its use may vary considerably depending upon the fact-specific circumstances surrounding each water right. The phrase may represent, for example, a finding or an assertion based upon adverse possession, estoppel, waiver, laches, etc.¹ The phrase itself, however, presents no definitive common issue of law.

The amount of individual fact-finding required to analyze the underlying legal and equitable theories of each subcase demonstrates that these matters are better resolved

¹ To the extent that the Idaho Power Company's *Motion* implicitly challenges such affirmative defenses as adverse possession, estoppel, laches, waiver, waste, forfeiture and abandonment, the courts have already upheld their application in water right disputes. See *Idaho Power Co. v. Idaho Dep't of Water Res.*, 104 Idaho 575, 661 P.2d 741 (1983) (remanding for further determination on claims of adverse possession, estoppel, laches, waiver, forfeiture and abandonment); *Supplemental Findings of Fact and Conclusions of Law (Facility Volume)* at 14 n.4, In re SRBA Case No. 39576 (July 31, 1998) ("There are exceptions to the finality of a license in that the use of a license may change subjecting the license to claims of abandonment, forfeiture, adverse possession, estoppel, or waste."), *adopted, Order on Challenge (Consolidated Issue) of "Facility Volume" Issue and "Additional Evidence" Issue*, In re SRBA Case No. 39576 (37-02078 et al.) (Dec. 29, 1999).

individually by the Special Masters via standard SRBA procedure. *See Order Denying Joint Motion to Consolidate Subcases, Vacate Order of Reference to Special Master Dolan and Stay Related Subcases* at 3 (Jan. 3, 2001). Again, the only thing common to all of these subcases is the involvement of the historic practice language. The foundations for the historic practice language can only be determined after the parties litigate, and the Court decides, the fact-specific legal and equitable theories asserted in support thereof. Such analysis would only be hindered by basin-wide designation.

Historic practice is referenced in recommendations where it is deemed necessary to do so in order to properly and efficiently define, clarify, and/or administer a certain water right. Idaho Code section 42-1411(2) describes the basic elements of a water right: the claimant's name and address, the source of water, the quantity of water, the priority date, the legal description of the point of diversion or the place of use, the annual volume of consumptive use, any conditions placed on the use, and "such remarks and other matters as are necessary for definition of the right, for clarification of any element of a right, or for administration of the right by the director." I.C. § 42-1411(2). The Director is required by law to determine these elements, including determination of remarks necessary to define, clarify or administer the elements. *Id.* References to historic practices in explanatory remarks is a result of that process; it is a result of detailed factual and legal analysis of each water right's fact-specific circumstances; it is a result of a determination that it was necessary for the proper and efficient definition, clarification, and/or administration of each specific water right. It is not the result of the creation of either a new basin-wide policy or a new substantive rule of law.

ii. There Is No Need for Early Resolution of this Issue Because It Does Not Involve a Common Issue of Law

Because the issue presented is fact-specific rather than a common issue of law, there is little, if any, threat of inconsistent rulings. Moreover, the Idaho Power Company has failed to show any factual commonality among these subcases.

iii. Because of Its Fact-Specific Nature, the Proposed Issue Would Only Hinder Timely Resolution of these Subcases

Again, the proposed basin-wide issue requires fact-specific determinations of the underlying legal and equitable theories unique to each separate subcase. Asking the Court to try essentially 48 separate factual scenarios under one consolidated basin-wide issue is impractical and inappropriate.

The burden that this proposed basin-wide issue could place on the affected water-users has already been demonstrated. Eight of the above-entitled subcases (37-00859A, 37-01175A, 37-07108, 37-07857, 37-07865, 37-07920, 37-07922, and 37-07944) were objected to by Gary and Helen DeMoss. The DeMosses were the only objectors in those subcases and have since moved to withdraw their objections. On September 26, 2007, Special Master Bilyeu granted the DeMosses' motions to withdraw but suspended issuance of the Special Master Reports and Recommendations because of the Idaho Power Company's motion. As a result, this matter has already hindered timely resolution of some subcases.

B. THESE SUBCASES SHOULD NOT BE CONSOLIDATED

As an alternative to designating a new basin-wide issue, Idaho Power moves the Court for an order consolidating the above-entitled subcases for the purpose of addressing the same purported common issue.

Again, Idaho Power's attempt to characterize the use of the phrase "historic practice" as a

common issue is misplaced. Any reference to historic practice is a finding based on independent factual details that satisfy independent legal and equitable theories; it is not an effort to create an independent term of art. As a result, consolidating these subcases raises the same issues of judicial economy and efficiency as discussed above in Part I.A of this *Response* and in the *State of Idaho's Response in Opposition to the United State's Motion to Consolidate Subcases*.

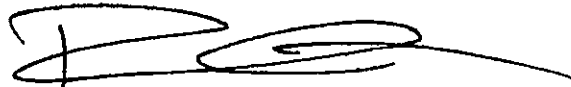
II. CONCLUSION

The proposed basin-wide issue is neither broadly significant nor better resolved at a basin-wide level. Furthermore, it does not raise a common issue of law. As a result, the Idaho Power Company's motions to designate a basin-wide issue, or alternatively, to consolidate these subcases should be denied.

RESPECTFULLY SUBMITTED this October 4, 2007.

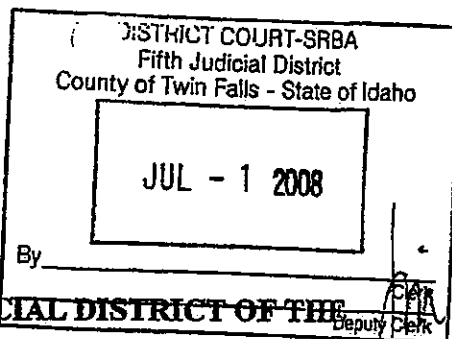
LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



DAVID I. STANISH
Deputy Attorney General

Exhibit O



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) Consolidated Subcase No.: 00-92026
Case No. 39576) ORDER DECONSOLIDATING
) SUBCASE 00-92026 AND ORDER OF
) RECOMMITMENT TO SPECIAL
) MASTERS
)

I.

BRIEF PROCEDURAL BACKGROUND

The detailed procedural background leading up to the consolidation of the issues in this proceeding is set forth in this Court's October 22, 2007, *Order Separating and Consolidating Common Issues from Subcases in "Exhibit A" on Remark Regarding Subordination of Hydropower Rights based on "Historical Practices"*. . . .

On April 10, 2008, the Idaho Department of Water Resources (IDWR) filed *Supplemental Director's Reports* explaining the basis for the recommendation of the "historical practices" subordination remark for hydropower claims 1-217, 1-218, 1-2064, 1-2068, 1-4024, 1-4025 and 1-4054. On May 19, 2008, IDWR filed a *Supplemental Director's Report* for hydropower claim 63-367.

After all *Supplemental Director's Reports* were filed the Court required the parties to file a statement of common issues identifying which specific issues, if any, the parties asserted could be more efficiently decided in a consolidated proceeding as opposed to being heard in individual subcases before the special masters. The United States presented the following issue:

Whether the priority of a water right can be subordinated to either existing or future water rights on the basis that the right holder has not placed a delivery call against junior water right holders over a certain period of time.

Idaho Power identified the following issue:

Other than legal abandonment or forfeiture, can historic practice regarding use or administration of a water right, including the absence of a call in the past, deny a party's right to enforce a senior priority?

Various irrigation districts jointly concurred with the common issues as presented by the United States and Idaho Power. The State of Idaho, the Ground Water Districts and the City of Pocatello opposed proceeding further on a consolidated basis.

A status conference was held on June 17, 2008, for purposes of determining how to proceed on the issue.

II.

DISCUSSION

The Court has reviewed the *Supplemental Director's Reports* and listened to the arguments and representations of counsel. The Court concludes that hearing the issues as framed would not further the goal of judicial economy because the underlying bases for IDWR's recommendations are fact specific. For the reasons discussed below any decision by this Court on the legal issues as framed would have little application without a developed factual record and therefore would not expedite the process. However, in the context of this *Order*, the Court can both provide guidance to the special masters as well as address some of the concerns raised by Idaho Power and the United States.

The parties opposing proceeding on a consolidated basis argue that IDWR's use of the term "historical practices" was not intended as a separate new legal doctrine in support of the subordination recommendation. Rather, that the term was used as a uniform general term for encompassing legal doctrines such as waiver, estoppel, laches, forfeiture, abandonment, etc., all of which have recognized application to water right claims. After reviewing the *Supplemental Director's Reports* this Court is in agreement.

The Court notes that the use of the term "historical practices" has been used to support the inclusion of a general provision describing how affected rights were to be administered for purposes of avoiding future controversy where water rights were administered differently than as prescribed by law. *State v. Idaho Conservation League*, 131 Idaho 329, 955 P.2d 1108 (1998); *State v. Nelson*, 131 Idaho 12, 951 P.2d 943

(1998). However, these cases did not hold that "historical practices" was a separate legal basis for modifying existing rights and requiring that the historical method of administration be continued. Rather the cases dealt with whether including a remark describing the method historical practices of administration met the criteria for a general provision. The cases did not involve substantive challenges to the historical method of administration. The Court does not view the cases as having application to the instant matter. Presumably, if historical practices of administration, without a supporting legal doctrine, were to be controlling a significant purpose of the adjudication would be undermined.

In an effort to address the concerns raised by Idaho Power and the United States over the use of the term "historical practices", as well as provide guidance to the special masters, this Court will hold the parties opposing consolidation to their position that the use of the term "historical practices" was used to uniformly describe recognized legal doctrines by precluding the parties from asserting such a legal theory before the special masters. In hindsight, confusion may have been avoided by simply recommending the subordination remark without the "historical practices" language. Objecting parties then could determine the underlying basis for the subordination recommendation through a *Supplemental Director's Report*.

THEREFORE, based on the foregoing, the following are hereby ordered:

1. Consolidated Subcase No. 00-92026 is deconsolidated.
2. The subcases listed in Exhibit A are recommitted in their entirety to the respective special masters for proceedings on the objections consistent with the conclusions contained in this *Order*.

DATED: July 1, 2008



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

✓01-00217
✓01-00218
✓01-02017
✓01-02032
✓01-02046
✓01-02064
✓01-02068
✓01-04024
✓01-04025
~~01-04054~~
✓01-10382
✓01-10383
✓01-10531
✓01-10532
~~37-00507~~
~~37-00856~~
~~37-02120~~
✓37-02471
✓37-02472
~~37-02778~~
~~37-02780~~

~~37-04147~~
~~37-04241~~
~~37-07754~~
✓37-20709
✓37-20710

✓63-00367

17

(Subcase list: 92-26EXA)
6/30/08

Exhibit A

Exhibit P

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

8 SRBA 1 (2004)

ORDER OF PARTIAL DECREE FOR GENERAL
PROVISION IN BASIN 31 REGARDING
OBSTRUCTIONS IN CAMAS CREEK AND
TRIBUTARIES

I.
PROCEDURAL BACKGROUND

1. On September 1, 2003, the Special Master issued an *Order Recommending General Provisions in Basin 31 Regarding Obstructions in Channels (Special Master's Recommendation)*, including findings of fact and conclusions of law.

2. The *Special Master's Recommendation* recommended the following general provision:

No dam or other obstruction to the natural flow of Camas Creek or its tributaries shall be maintained so as to divert water from the channel of the stream, except through ditches, canals or other works provided with head gates, control works and measuring devices. Holders of water rights that were previously decreed in *Suave v. Abbott* to divert water from Camas Creek or any of its tributaries, their successors, agents, servants and employees are hereby perpetually enjoined and restrained from maintaining in any stream or slough, or permitting to exist within such stream or slough where the same traverses their respective lands, or any land owned or controlled by them, any obstruction to the flow of water, except in connection with the diversion of water through head gates equipped with measuring devices. In case any water right holder shall fail to remove any obstruction from the channel of Camas Creek or any of its tributaries within 7 days after receiving notice from the watermaster, who has determined that the obstruction interferes with water delivery, the watermaster may authorize a water user to remove such obstruction in accordance with applicable federal and state laws and regulations. The expense thereof shall be the responsibility of the water right holder requesting the removal.

3. The general provision was not initially recommended in the *Director's Report for Basin, 31, Reporting Area 8*, filed by the Director on May 10, 2001. The general provision proposal originated from an objection filed to the absence of a recommended general provision. The general provision is based on a similar provision contained in a prior federal decree entered in the case of *Suave v. Abbott*, Case No. 635 (D. Idaho. Nov. 1, 1930).

4. All surface right claimants in Basin 31, including those with the rights to which the general provision directly applies, were properly served with notice of the proposed general provision raised by the objection and were afforded the opportunity to participate in and be heard in the subcase.

5. Ultimately, all parties participating in the subcase reached a settlement regarding the proposed general provision language and filed a *Standard Form 5*, with IDWR's concurrence.

II.

LEGAL AUTHORITY AND BASIS FOR GENERAL PROVISION

Idaho Code § 42-1411 provides that the director of IDWR shall prepare a report on the water system. "The director may include such general provisions in the director's report, as the director deems appropriate and proper, to define and administer all water rights." I.C. § 42-1411 (2000). "The decree shall also contain an express statement that the partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights." I.C. § 42-1412(6). In *A & B Irrigation District v. Idaho Conservation League*, 131 Idaho 411, 958 P.2d 568 (1998), the Idaho Supreme Court stated:

A general provision is a provision that is included in a water right decree regarding the administration of water rights that applies generally to water rights, is not an element of the water right, or is necessary for the efficient administration of the water right decreed. A general provision is an administrative provision that generally applies to water rights but it need not apply to every water right.

Id. at 421, 958 P.2d at 578 (citations omitted).

Historical or customary practices of administration of water rights can serve as the basis for a general provision. In *State v. Idaho Conservation League*, 131 Idaho 329, 945 P.2d 1108 (1998), the Idaho Supreme Court held that a general provision based on historical administrative practices could be necessary for the efficient administration of a water right "because it avoids controversy among the water rights holders by clearly notifying them of the mechanism [of administration]." *Id.* at 3334-35, 955 P.2d at 1113-14 (discussing "excess flow" general provision); *State v. Nelson*, 131 Idaho 12, 951 P.2d 943 (1998) (discussing "rotation for credit" general provision). Historical practices notwithstanding, the Court is not compelled to decree a general provision based on historical administrative practices to the extent such practices are determined to be contrary to law or authorize the administration of rights in a "vacuum" without regard for other rights that are part of the same hydrologic system. i.e the "sweetheart decree."

Although parties may not propose a general provision in a director's report, parties as objectors, as part of the objection, have the right to propose general provisions for entry where the director recommended none. *Order Re: General Provisions and I.A.R. 12(c)(2)*, (subcase 91-0005) (Sept. 22, 1998).

III. EVIDENTIARY VALUE OF IDWR'S CONCURRENCE ON A *STANDARD FORM 5*

Idaho Code § 42-1411(4) provides that the filing of the director's report shall "constitute prima facie evidence of the nature and extent of the water rights . . ." I.C. § 42-1411(4) (2000). Additionally, as applied to settlement agreements, IDWR's role in the SRBA "is an independent expert and technical assistant [who] assure[s] that claims to water rights acquired under state law are accurately reported . . ." I.C. § 42-1401B(1) (1996). Therefore, when IDWR's representative signs a *Standard Form 5* or otherwise signs off on an agreement and states that its contents are true, IDWR's concurrence provides evidentiary value on which the Court is entitled to rely. *Memorandum Decision and Order on Challenge*, subcases 36-00061, *et al.* (Sept. 27, 1998) ("*Morris*") at 17.

IV. REVIEW OF GENERAL PROVISION LANGUAGE BY COURT

Although the agreement reached by the parties represents final settlement of all pending issues, the Court is still charged with the duty of reviewing the contents of the agreement to ensure compliance with the law. The Court is not required to "rubberstamp" either the recommendations contained in the director's report or any agreement reached by the parties to the extent either is contrary to law. *State v. United States*, 128 Idaho 246, 258-59, 912 P.2d 614, 626-27 (1995). The Court's role, however, is somewhat limited when a trial was not conducted on the merits and when IDWR concurs with the settlement. The Presiding Judge or Special Master is not required by statute to conduct an evidentiary hearing in order to accept a stipulation as final resolution. *Morris* at 14. Thus, the Court's review is limited to the existing record and therefore may not be able to ascertain from the face of the record all of the potential problems the general provision is crafted to eliminate.

In reviewing the general provision language, the Court notes that the issues addressed in the general provision language appear on its face to be regulated by both state and federal legislation. For example, I.C. § 42-701 requires that all non domestic and stock water diversion works already be equipped with head gates and measuring devices. IDWR is charged with the enforcement of this regulation. Idaho Code § 42-3801 *et seq.* regulates the alteration of natural stream channels. The federal Clean Water Act, 33 U.S.C. § 1344, requires a dredge and fill permit for the alteration of a natural stream channels in navigable waters. Finally, even without a general provision allocating removal costs, it would seem that under the current state of the law any party seeking to have a channel dredged or other natural obstructions removed could not compel another water user on the system to pay for such costs. Although most of these issues were properly addressed in the *Special Master's Recommendation*, the *Recommendation* did not specifically address the necessity of the general provision in light of the applicable regulations.

However, despite the applicable state and federal regulations, the Court relies on the following criteria in finding that the general provision is necessary for the efficient administration of water rights and in ordering the general provision decreed. First, all affected parties were provided proper notice and all affected parties stipulated to the entry of the general provision language. Parties can stipulate as to how their rights should be administered so long as the rights of other water right holders not made a party to the proceedings are unaffected. In *Idaho Power Company v. State*, 104 Idaho 575, 661 P.2d 741 (1983), the Idaho Supreme Court stated:

[W]e find nothing in the law of this State which precludes a person from voluntarily obtaining less than the full panoply of rights associated with the ownership of real property. Agreements not to assert ownership rights to their fullest are common in today's society, e.g. restrictive covenants and equitable servitudes.

Id. at 587, 661 P.2d at 753.

Next, this Court relies on the evidentiary value of IDWR's concurrence in the *SF5 Morris* at 17. A general provision is an administrative provision that is necessary for the efficient administration of a water right. *A & B Irrigation District* at 411, 95 P.2d at 568; *Idaho Conservation League* at 334-35, 955 P.2d at 1113-14. Historical or customary administrative practices can be the basis for a general provision. *State v. Idaho Conservation League, supra*. IDWR is not only the state agency charged with administering the water rights, but IDWR's role in the SRBA is also that of an independent expert to the Court. I.C. § 42-1401B(1). Therefore the Court can also rely on IDWR's concurrence in the *SF5* in determining whether such a general provision is necessary for the efficient administration of water rights.

Finally, the part of the general provision dealing with the removal of any obstructions is not intended to be applied in any manner inconsistent with applicable state or federal law. This avoids any ambiguity in the intended scope and application of the provision.

Therefore, based on the foregoing criteria this Court will not "second – guess" the necessity of the general provision. However, this determination is limited to the facts and circumstances of this subcase and should not be construed as an endorsement that historical practices, prior decrees or settlement agreements create a *per se* valid basis for general provisions in all situations.

IV. ADOPTION OF SPECIAL MASTER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Recommendation* and wholly adopts them as its own.

**V.
ORDER OF PARTIAL DECREE FOR GENERAL PROVISION**

Therefore, IT IS ORDERED that the general provision for **BASIN 31 REGARDING OBSTRUCTIONS IN CAMAS CREEK AND TRIBUTARIES**, is hereby decreed as set forth in **EXHIBIT A**, together with the list of water rights to which the general provision is intended to apply as set forth in **EXHIBIT B**.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby **CERTIFIED**, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated February 18, 2004

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

EXHIBIT A

No dam or other obstruction to the natural flow of Camas Creek or its tributaries shall be maintained so as to divert water from the channel of the stream, except through ditches, canals or other works provided with head gates, control works and measuring devices. Holders of water rights that were previously decreed in *Suave v. Abbott* to divert water from Camas Creek or any of its tributaries, their successors, agents, servants and employees are hereby perpetually enjoined and restrained from maintaining in any stream or slough, or permitting to exist within such stream or slough where the same traverses their respective lands, or any land owned or controlled by them, any obstruction to the flow of water, except in connection with the diversion of water through head gates equipped with measuring devices. In case any water right holder shall fail to remove any obstruction from the natural channel of Camas Creek or any of its tributaries within 7 days after receiving notice from the watermaster, who has determined that the obstruction interferes with water delivery, the watermaster may authorize a water user to remove such obstruction in accordance with applicable federal and state laws and regulations. The expense thereof shall be the responsibility of the water right holder requesting the removal.

EXHIBIT A

EXHIBIT B
LIST OF WATER RIGHT NUMBERS TO WHICH THE BASIN 31 GENERAL PROVISION
CONCERNING OBSTRUCTIONS IN CHANNELS APPLIES

31-00005	31-00062Q	31-00124
31-00006	31-00062S	31-00125
31-00011	31-00062T	31-00126
31-00012A	31-00062U	31-00127
31-000128	31-00063A	31-00128
31-00013B	31-00063C	31-00129
31-00018	31-00063F	31-00130
31-00019	31-00063J	31-00133
31-00020	31-00063K	31-00134
31-00022	31-00063L	31-00135
31-00023	31-00063M	31-00141
31-00024	31-00063N	31-00142
31-00025	31-00063P	31-00143
31-00028A	31-00063Q	31-00144
31-00028B	31-00063S	31-00145
31-00029	31-00063T	31-00146
31-00030	31-00063U	31-00147A
31-00031	31-00064	31-00151
31-00032	31-00065	31-00155
31-00033	31-00066C	31-00156
31-00042	31-00067C	31-00157B
31-00043A	31-00078	31-00158
31-00043B	31-00079A	31-00159
31-00046	31-00079B	31-00160A
31-00047	31-00080	31-00160B
31-00048	31-00082	31-00161 A
31-00049A	31-00083	31-00161 B
31-00049B	31-00084	31-00162
31-00050A	31-00085	31-00163
31-00050B	31-00086	31-00166
31-00051 A	31-00087	31-00167
31-00051 B	31-00088	31-00168
31-00052	31-00089	31-00169
31-00053A	31-00090	31-00173
31-00053B	31-00095A	31-00174A
31-00054A	31-00095B	31-00175
31-00054B	31-00096	31-00176
31-00055B	31-00097	31-00177
31-00055C	31-00098	31-00178
31-00055D	31-00099	31-00181
31-00056	31-00100	31-00184
31-00057	31-00104	31-00185
31-00058	31-00105	31-00186
31-00059	31-00113	31-00187
31-00060A	31-00115	31-00188
31-00060B	31-00116	31-00189
31-00061	31-00117	31-00190
31-00062A	31-00118A	31-00191
31-00062C	31-00119	31-00192
31-00062F	31-00120	31-00193
31-00062J	31-00121 A	31-00194B
31-00062K	31-00121 B	31-00195
31-00062L	31-00122A	31-00198
31-00062M	31-00122B	
31-00062N	31-00123A	
31-00062P	31-00123B	

EXHIBIT B

**LIST OF WATER RIGHT NUMBERS TO WHICH THE BASIN 31 GENERAL PROVISION
CONCERNING OBSTRUCTIONS IN CHANNELS APPLIES**

31-00199	31-00276	31-11465
31-00200	31-00277	31-11468
31-00202	31-00278	31-11709
31-00206	31-00279	31-11710
31-00207	31-00280	31-11711
31-00208	31-00281	31-11712
31-00209	31-00282	31-11713
31-00210	31-00283	31-11714
31-00211	31-00284	31-11768
31-00212A	31-00286	31-11769
31-00213	31-00287	31-11770
31-00214A	31-00290	31-11771
31-002146	31-00291	31-11772
31-00214C	31-00292	31-11773
31-00215A	31-00293	31-11789
31-00215B	31-002946	31-11790
31-00216	31-00295	
31-00218	31-00296	
31-00219	31-00297	
31-00220	31-00298	
31-00221	31-00299A	
31-00231	31-00299B	
31-00232	31-00300A	
31-00235	31-00300B	
31-00237	31-00301	
31-00238	31-00302A	
31-00239	31-003026	
31-00241	31-00304	
31-00242	31-00306	
31-00243	31-00307	
31-00244	31-00309	
31-00245	31-00317	
31-00249	31-00319	
31-00250	31-00321	

EXHIBIT B