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DEPARTMENT OF
WATER RESOURCES

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

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

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

AFFIDAVIT

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

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

2. I attest that attached as Exhibit C is a true and correct copy of excerpts from the 30(B)(6) Deposition of the Bureau of Reclamation Testimony of Richard M. Rigby dated Oct. 27, 2009.

3. I attest that attached as Exhibit D is a true and correct copy of Spaceholder Contract Among the United States, the American Falls Reservoir District, and Idaho Power Company for Storage in the American Falls Replacement Dam and for Construction and Operation and Maintenance of the American Falls Replacement Dam Program dated March 31, 1976.

4. I attest that attached as Exhibit E is a true and correct copy of Letter from James C. Tucker to IDWR dated Dec. 21, 2005.

5. I attest that attached as Exhibit F is a true and correct copy of excerpts from the Rule 30(B)(6) Deposition of the State of Idaho Testimony of David R. Tuthill, Jr. and Deposition of David R. Tuthill, Jr., dated Oct. 22, 2009.

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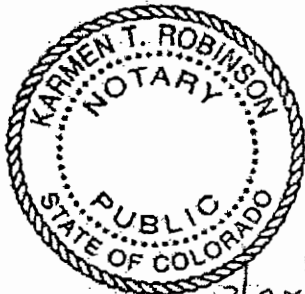
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DATED this 10th day of November, 2009.

David A. Jarvis
David A. Jarvis

SUBSCRIBED AND SWORN to before me this 10th day of November, 2009

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



My Commission Expires 3/25/2013

Attachment A

Subcase Nos.

Minidoka Power Rights

01-00217

01-00218

01-04024

01-04025

Palisades Storage Power Right

01-02068

Palisades Natural Flow Power Right

01-04054

Exhibit C

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

In Re SRBA)
Case No. 39576) Subcase Nos. 01-00217, 01-00218
) 01-04024, and 01-04025
) (Minidoka Power Right)
)
) Subcase Nos. 01-02068 and
) 01-04054
) (Palisades Power Rights)

30(B) (6) DEPOSITION OF THE BUREAU OF RECLAMATION
TESTIMONY OF RICHARD M. RIGBY
OCTOBER 27, 2009

REPORTED BY:
JEFF LaMAR, C.S.R. No. 640
Notary Public

APPEARANCES (Continued):

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2
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20 P.O. Box 70
21 Boise, Idaho 83707:
22 ///
23 ///
24 ///
25 ///

1 THE 30(B)(6) DEPOSITION OF THE BUREAU OF
2 RECLAMATION, TESTIMONY OF RICHARD M. RIGBY, was
3 taken on behalf of A & B Irrigation District,
4 Burley Irrigation District, Milner Irrigation
5 District, North Side Canal Company, and Twin Falls
6 Canal Company, at the offices of Barker, Rosholt &
7 Simpson, 1010 West Jefferson, Suite 110, Boise,
8 Idaho, commencing at 9:11 a.m., October 27, 2009,
9 before Jeff LaMar, Certified Shorthand Reporter
10 and Notary Public within and for the State of
11 Idaho, in the above-entitled matter.

APPEARANCES:

12
13 For A & B Irrigation District, Burley Irrigation
14 District, Milner Irrigation District, North Side
15 Canal Company, and Twin Falls Canal Company:
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1 RICHARD M. RIGBY,
2 first duly sworn to tell the truth relating to
3 said cause, testified as follows:
4
5 EXAMINATION
6 BY MR. SIMPSON:
7 Q. Sir, will you state your full name for
8 the record.
9 A. Richard M. Rigby.
10 Q. And, Mr. Rigby, my name is John
11 Simpson, and I'm here today representing a number
12 of surface irrigation entities in connection with
13 the SRBA adjudication of rights commonly referred
14 to as the Minidoka power rights and the Palisades
15 power rights.
16 And, Mr. Rigby, I'm going to hand you
17 what we'll mark as the next exhibit, 23, for you
18 to look at.
19 (Exhibit 23 marked.)
20 Q. (BY MR. SIMPSON): Mr. Rigby, let me
21 know when you've had a chance to fully review that
22 document.
23 A. (Reviews.)
24 Okay.
25 Q. Mr. Rigby, have you seen that document

1 before?
2 A. Yes, I have.
3 Q. Okay. And --
4 A. Actually, let me rephrase that. I saw
5 the earlier version.
6 Q. Okay.
7 A. The one that had the October 23rd date
8 on it.
9 Q. All right.
10 A. So this is the first time I've seen
11 this one.
12 Q. Okay. So if your counsel has another
13 version, an amended version of the Notice of
14 Deposition, he hasn't shared that with you?
15 A. I saw the earlier version.
16 Q. Okay. And are you today being offered
17 as a witness on behalf of the United States Bureau
18 of Reclamation in response to this notice?
19 A. Yes, I am.
20 Q. Mr. Rigby, if you could just briefly
21 detail your work experience.
22 A. I've been employed with the Bureau of
23 Reclamation since 1972. I've been employed in the
24 Pacific Northwest region, the regional office here
25 in Boise, since 1978. I've worked in the fields
of repayment, contracts, water rights, water
acquisition for Endangered Species Act and various
other water-policy-type issues in Idaho.
Q. So would it be fair to say that you're
familiar with the reservoir system above Milner
Dam?
A. I believe so.
Q. Are there any matters identified in
that Exhibit No. 23 that you do not feel competent
to respond to?
A. Well, I guess when we get into the
questions, I'll know better. But I'm not sure I
understand exactly what is intended with all of
the questions.
Q. Okay. Fair enough. Before your
deposition, I handed you a number of documents
that were United States filings in this matter of
which I'll refer to as 217, 218, the water rights
for Minidoka power at the Minidoka Dam, the two
senior rights.
And have you had a chance to review
those documents?
A. I have.
Q. All right. And could you just briefly
identify those for everybody in the room.

1 Q. And at the time Palisades was being
2 considered, American Falls and Jackson were
3 already constructed; correct?

4 A. Correct.

5 Q. And those reservoirs and the storage
6 of water in those reservoirs were subject of
7 various space holder and other contractual
8 obligations; correct?

9 A. I'm sorry. I got distracted.

10 Q. That's all right. And the storage of
11 water behind those reservoirs were subject to
12 existing space-holder contracts and other
13 contractual obligations throughout the system;
14 correct?

15 A. Yeah, there were -- most of the water
16 in those reservoirs was already contracted.

17 Q. Okay. And in looking at
18 paragraph 24(a) of Exhibit 2, which is the
19 deposition exhibit that is the Eagle decree, would
20 it be fair to say that that paragraph 24(a)
21 identifies that there were preexisting contractual
22 obligations for the storage and bypassing of water
23 for power generation and other rights both at
24 Minidoka and downstream of Minidoka?

25 A. I don't think I would say that. I

1 would not agree with that.

2 Q. And why not?

3 A. The article talks about the exercise
4 of the right of the United States to hydropower
5 generation at Minidoka Dam and the bypass of water
6 under natural-flow rights that belong to the Twin
7 Falls and North Side Canal Companies.

8 Q. So from your perspective, the only
9 rights that might affect the winter power
10 operations at Minidoka Power Plant pursuant to
11 paragraph 24(a) were the natural-flow rights of
12 Twin Falls and North Side Canal Companies?

13 A. I believe so.

14 Q. Okay. So when paragraph 24(a)
15 identifies at the bottom of the first paragraph on
16 page 28 that states "While the United States must
17 operate the American Falls and Minidoka Dams so as
18 not to interfere with these third-party rights,"
19 from your perspective, Mr. Rigby, the third-party
20 rights identified there are who?

21 A. They are the same rights that are
22 addressed in the indented paragraph on page 29.
23 Well, I guess that's the power company. Sorry.
24 That's the power right.

25 It's the Twin Falls and North Side

1 Canal Company rights.

2 Q. Okay. So in the indented paragraph on
3 page 29, the first sentence, in part, reads, "To
4 the amount of water required to provide flows
5 below Minidoka Dam sufficient to meet existing
6 diversion rights in the reach of the river through
7 Milner Dam"?

8 A. Correct.

9 Q. And that's what you're referring to?

10 A. That's what I'm referring to.

11 Q. Mr. Rigby, I have a couple general
12 questions that I'd like to ask you so that I have
13 an understanding of Reclamation's operations, and
14 specifically then I can go back to
15 paragraph 24(a).

16 During the storage season, how does
17 Reclamation determine whether to store water or
18 pass it through the reservoir system?

19 A. It reviews the carryover in the
20 reservoirs, the snowpack, comparable water years,
21 and attempts to release water -- to limit release
22 of water through the system to the amount that
23 assures a high probability of filling the
24 reservoirs.

25 Q. So for example, this year, with the

1 extensive carryover that's in the system at the
2 end of the irrigation season, Reclamation looks at
3 that amount of carryover and makes a determination
4 on where to start the releases through the
5 reservoir?

6 A. Correct.

7 Q. Okay. And this year, for example,
8 you've started at 1500 cfs?

9 A. That's correct.

10 Q. And in other years, depending upon
11 carryover, the amount of carryover that's in the
12 system, that number could either go up or down?

13 A. That's correct.

14 Q. And if, for example, this year with
15 using 1500 cfs and Reclamation makes the
16 determination that it's not going to store that
17 water and it will pass that water, then that water
18 would be utilized at Minidoka Dam for power
19 purposes; correct?

20 A. I believe so.

21 Q. Okay. So in Reclamation's view, then,
22 once it makes a determination that based upon
23 those projections you just described that water's
24 not necessary for storage, then it looks to
25 satisfy the power right at Minidoka Dam?

1 A. That's correct.

2 Q. Okay. And in Reclamation's view, that
3 water that's passed or not stored, is that natural
4 flow?

5 A. That is northerly flow.

6 Q. Okay. So if it passes the water, then
7 it's doing so to satisfy its power right, to the
8 extent the water being released isn't in excess of
9 the rights?

10 A. That's right.

11 Q. Okay. With respect to that decision
12 to store or release water, what obligations does
13 Reclamation have to the space holders within the
14 system?

15 A. Well, I guess its primary obligation
16 commitment is to attempt to maximize storage, to
17 store as much water as practical in the
18 reservoirs.

19 Q. And that would be done so giving
20 consideration also, then, to maximize power
21 generation?

22 A. Well, obviously there's -- Reclamation
23 has some -- some districts have preference power.
24 They have the right to receive power from
25 Reclamation projects. And we have a general

1 responsibility to use the resource in a manner
2 that creates the most benefits across the board.

3 Q. Attempts to optimize both storage and
4 power?

5 A. That's correct.

6 Q. Okay. And with respect to the power
7 generation at Minidoka Dam, those users with
8 preferred power uses gave up that right in
9 exchange to allow Reclamation to store water in
10 the Upper Snake; correct?

11 A. Well, at the time the Palisades
12 contracts were negotiated and this provision was
13 adopted, the Burley and Minidoka Irrigation
14 District had a right to the power profits in
15 Minidoka Dam, and there had been a long -- this
16 was a long controversy over how Reclamation would
17 operate the Minidoka Power Plant.

18 And it was particularly Burley's
19 assertion that we were obligated to release as
20 much water as possible through the power plant to
21 generate as much as possible in the wintertime to
22 maximize the profits that they might receive.

23 And the problem with that was it
24 really impacted the ability to store water, and it
25 created big problems in the drought of the '30s

1 because there was a lot of storable water that
2 went downstream. And there had been lawsuits and,
3 you know, longstanding controversy over that
4 issue.

5 So I think as a practical matter from
6 a pragmatic standpoint, Reclamation believed it
7 was necessary to protect the rights of the power
8 plant, and so there was the subordination
9 provision was negotiated in the form that it is
10 currently.

11 Q. And in exchange for that subordination
12 that you've just described, those preferred power
13 users received indirectly some benefit back, did
14 they not?

15 A. The Burley and Minidoka Irrigation
16 District -- the power plant received some
17 benefits --

18 Q. Okay.

19 A. -- because of the payment of the
20 winter power -- the power savings, power loss -- I
21 can't remember the term right now. Winter power
22 loss.

23 Q. Okay. There was a calculation?

24 A. There was a calculation as to what
25 might have been generated that was being used --

1 was being done to store water upstream.

2 Q. Okay. And ultimately did that
3 calculation accrue back essentially to hold
4 harmless, as you described, Burley and Minidoka
5 from the act of storing that water?

6 A. I think the intent was to reimburse
7 the power plant for those losses.

8 Q. Okay. Which in turn would go to the
9 benefit of those preferred power users?

10 A. That was the line, the discussion, I'm
11 sure.

12 Q. And so that was part of the
13 negotiations particular to Burley and Minidoka,
14 for example, that if there were those users that
15 relied upon that preferred power and received some
16 benefit from the generation of power, they would
17 give up that right, if you will, in exchange to
18 allow Reclamation to store the water to the
19 benefit of the Palisades Reservoir?

20 A. To my knowledge, there was nothing
21 about this that had to do with their use of power.
22 To my knowledge, it was all about the power
23 profits that they were in line to receive.

24 Q. So in your mind, it didn't affect the
25 rate that they had to pay for their use of power

1 savings provisions, those need to be in the
2 decree.

3 Q. So you identified third-party claims
4 that might arise out of the temporary exchange of
5 water; correct?

6 A. Right.

7 Q. And so would it be your perspective in
8 looking at those provisions of the Eagle decree
9 that those provisions were binding and Reclamation
10 was concerned about having those provisions
11 binding upon third parties that were in existence
12 at that time of the Eagle decree and anybody that
13 came onto the system thereafter?

14 A. Well, the contracts were between
15 Reclamation and specific space holders. The
16 concern was not that other parties had to agree to
17 that, but that other parties couldn't object to
18 that.

19 Q. Right.

20 A. That they had to accept that as part
21 of the status quo.

22 Q. Okay. And is it your perspective that
23 because third parties, whether those third parties
24 were identified at the time of the Eagle decree or
25 ~~came into existence after the Eagle decree, that~~

1 they, through the exercise of those provisions,
2 are now bound by them?

3 A. I believe so.

4 Q. Okay. And hence, it's no longer
5 necessary, then, to include that provision in a
6 subsequent decree?

7 A. That would be my perspective.

8 Q. Mr. Rigby, along those lines, if we
9 can again look at Deposition Exhibit 2, which is
10 the Burley Irrigation.

11 A. Okay.

12 Q. And still staying with
13 paragraph 24(a).

14 And would it be your testimony that
15 BOR still operates the Minidoka Power Plant
16 consistent with paragraph 24(a)?

17 A. Yes, sir. To the -- with the
18 exception of the other rights, the third-party
19 rights and the power company.

20 Q. Okay. With the exception of the
21 indented portion of --

22 A. Yes.

23 Q. -- paragraph 24(a) on page 29?

24 A. Correct.

25 Q. Okay. And why is that so?

1 A. Because the Twin Falls and North Side
2 rights are not being exercised, I guess there's a
3 question of whether they exist anymore.

4 And it's our position that the 1923
5 contract, the contract rights to secondary storage
6 available to Idaho Power Company, was resolved
7 in -- with the reconstruction of American Falls
8 Dam.

9 Q. So with respect to the first sentence,
10 first part of that sentence in the indented
11 portion of page 29, Mr. Rigby -- and we discussed
12 this earlier -- that states, "To the amount of
13 water required to provide flows below Minidoka Dam
14 sufficient to meet existing diversion rights in
15 the reach of the river through Milner Dam."

16 To you, does that simply identify
17 water rights, or does that include any contractual
18 rights between Reclamation and any diverters
19 downstream from Minidoka Dam?

20 A. To me, the phrase "existing diversion
21 rights" refers to water rights.

22 MR. SIMPSON: Okay. Mark this as the next
23 exhibit, if we could.

24 (Exhibit 26 marked.)

25 (Recess.)

1 MR. SIMPSON: Back on the record.

2 Q. Mr. Rigby, I handed you what has been
3 marked as Exhibit 26. And if you could identify
4 that for the record.

5 A. The document is a stipulation between
6 the United States Bureau of Reclamation and
7 counsel for Twin Falls Canal Company and North
8 Side Canal Company, dated December 28th, 1955.

9 Q. Okay. And this identifies a
10 resolution of a conflict between the canal
11 companies and Reclamation that they reached this
12 stipulation, is it not?

13 A. That is correct.

14 Q. And it identifies, does it not, that
15 Reclamation agrees to operate the Minidoka project
16 in terms of storing of water in the reservoir
17 system in a manner that would not impair the canal
18 company's ability to refill certain space in
19 American Falls; correct?

20 A. Well, I believe what it did, it
21 limited the exercise of the water right that was
22 filed by the United States on November 21st, 1955,
23 to the express paragraph on the second page.

24 Q. Okay. So that Reclamation would not
25 exercise this use for water, the 240 cfs of water,

1 Q. In the Foster decree?

2 A. I don't know that.

3 Q. Okay. I'm just going to hand to you
4 what I'll represent to you is a copy of the Foster
5 decree, and you can take as much time to look at
6 it as you'd like. And I've just identified a page
7 in that decree.

8 A. Well, it does appear to reference the
9 217 and 218 water rights that you mentioned.
10 December 14th, 1909, for 2500 second-feet and
11 July 1st, 1912, for 200 second-feet.

12 Q. And it identifies that those are being
13 decreed to the defendant?

14 A. Secretary of the Interior.

15 Q. Okay. So by identifying that the
16 Secretary of Interior, the defendant in that case,
17 does that identify for you that they were a party
18 to that Foster decree?

19 MR. GEHLERT: Objection. Calls for a legal
20 conclusion.

21 THE WITNESS: I accept what you say. I
22 don't have any basis to make a decision on that.

23 Q. (BY MR. SIMPSON): Okay. Rich, if we
24 could, let's turn to Exhibit 9, I believe?

25 ~~A. I'm going to have a hard time doing~~

1 that, John. I got 7.

2 Q. That notebook goes up to 7. Let's
3 see.

4 And for the record, Rich, I believe
5 that's the United States' Motion for Summary
6 Judgment, is it not?

7 A. Yes.

8 Q. Okay. And if you'd turn to
9 Attachment B to Exhibit 9.

10 That's the proposed remarks submitted
11 by the United States, are they not?

12 A. They are.

13 Q. Okay. And that's for water rights 217
14 and 218, 4024 and 4025 for the Minidoka Power
15 Plant, and then for Palisades 2068 and 4054;
16 correct?

17 A. Correct.

18 Q. In looking at the proposed remark for
19 217 and 218 at the top of that page, Mr. Rigby,
20 are you familiar with this language?

21 A. Yes, sir.

22 Q. Okay. Were you involved in the
23 process of negotiating this language?

24 A. Yes.

25 Q. With respect to this language,

1 generally, does this language fall out of
2 paragraph 24(a) of the Palisades contracts?

3 A. It does.

4 Q. Okay. And there's certain language
5 that was contained in or is contained in
6 paragraph 24(a) which was not brought forward into
7 this proposed remark; is that correct?

8 A. That's correct.

9 Q. And the reason for that exclusion of
10 that language out of paragraph 24(a) was what,
11 Mr. Rigby?

12 A. Well, I believe our brief explained
13 that the rights of Twin Falls and North Side had
14 not been -- were not being used and not been
15 claimed.

16 Q. Okay. Any other reason?

17 A. What I said about the power -- the '23
18 contract with the power company.

19 Q. All right. And about halfway down
20 through this language, it identifies a statement
21 that starts out "Accordingly."

22 Do you see that?

23 A. Uh-huh.

24 Q. "Accordingly, except as it may be

25 ~~determined by the Secretary that additional water~~

1 may be passed through the Minidoka Dam without the
2 loss of water."

3 Do you see that statement?

4 A. I see that.

5 Q. And we had a discussion a little while
6 ago about the language in paragraph 24(a) that
7 references loss of water for irrigation?

8 A. Uh-huh.

9 Q. And that term "irrigation" is not
10 included in this proposed remark; correct?

11 A. Correct.

12 Q. Okay. And the basis for not including
13 that phrase or that term "irrigation" is because
14 from your perspective Reclamation stores all the
15 water without regard to whether it's through
16 contract for irrigation as opposed to hydropower
17 or for other project purposes?

18 A. That's correct.

19 Q. Okay. This language talks about a
20 determination by the Secretary.

21 Who will make that determination?

22 A. The Bureau of Reclamation.

23 Q. Okay. And when would that
24 determination be made?

25 A. On a continuing basis.

1 provision which indicated that the production of
2 power, hydropower, at Reclamation projects in
3 southern Idaho was consistent with the Idaho state
4 water plan because of the substantial needs for
5 additional power in southern Idaho?

6 A. I'm not that familiar with the report.

7 Q. Okay. Mr. Jarvis prepared an
8 affidavit in this case.

9 Did you contribute anything to that
10 affidavit?

11 A. I did not.

12 Q. It was interesting to me in the
13 affidavit as a side line that the contract they
14 elected to attach to it was the
15 Aberdeen-Springfield Canal Company Palisades
16 contract.

17 And that is not a Reclamation project,
18 is it?

19 A. It's a Reclamation contract, but it's
20 not -- the Aberdeen-Springfield project -- canal
21 was not constructed by Reclamation.

22 Q. It's a Carey Act project?

23 A. Yes.

24 Q. Do you know any reason why they would
25 choose that contract rather than a contract for

1 such Falls Irrigation District which would put the
2 power rate forum directly before the court?

3 A. I have -- I can't say why not. Our --
4 I think our expectation was that the contracts
5 were very similar.

6 Q. But you do not sell power as a reserve
7 power to Aberdeen-Springfield Canal Company, do
8 you?

9 A. No, I do not.

10 Q. When I say "you," Bureau of
11 Reclamation.

12 A. But I'm not sure there's a provision
13 about a sale of power in the Palisades contract
14 with Falls Irrigation District. I don't know
15 whether there is or not.

16 Q. Well, there is. And I'll represent to
17 you that in the Falls there has a provision, which
18 happens to be Article 27, that's power for
19 irrigation pumping, and it has a formula for
20 determining the rate.

21 A. Okay.

22 Q. And I think in my experience you'll
23 find that in all of the Reclamation project
24 contracts that have power from the Reclamation
25 project itself, including A & B Irrigation

1 District and Burley Irrigation District
2 specifically.

3 And do you have any reason to question
4 that?

5 A. I don't have any reason to question
6 it.

7 Q. For instance, the Falls Irrigation
8 District, I'll just read a portion of this. It
9 says, "The power and energy so set aside or
10 provided in lieu thereof will be furnished to
11 electric pumping plants and such other points as
12 are agreed on between the United States district
13 at rates per kilowatt hour to govern for
14 irrigational pumping on Federal Reclamation
15 projects as to powering an entity from the
16 Palisades Power Plant and interconnect the plants
17 as these are established from time by the
18 Secretary pursuant to the Federal Reclamation
19 law."

20 Now, that's pretty standard language,
21 is it not, for those contracts, to your knowledge?

22 A. To my knowledge, yes.

23 Q. Do you know what the total capacity of
24 the Minidoka Power Plant is today? And capacity,
25 both in kilowatt hours and in flows.

1 A. I do not know the power plant capacity
2 in terms of kilowatt hours, kilowatts. I believe
3 if we totaled the rights up, it's 2700, plus 825,
4 plus 5,010. I believe those are the numbers.

5 Q. I think that's pretty accurate.

6 And so we know that at least 8,000 cfs
7 can be used there, and you only get power loss
8 paid for 2700 loss?

9 A. One thing we need to remember is that
10 the -- during the irrigation season, we are
11 generating electricity through that plant with all
12 of the irrigation deliveries that are being made.

13 Q. Right. No question about that. And
14 we have a much larger debt to pay because of that
15 new plant, don't we? I mean we don't --

16 A. The United States does, yes.

17 Q. The United States does?

18 A. Yes.

19 Q. And you still -- I say "you," the
20 Bureau of Reclamation still operates the Minidoka
21 plant; correct?

22 A. Correct.

23 Q. Did you just deliver power to
24 Bonneville power administration for their
25 marketing, except for the reserve power? And the

1 less than 2700 cfs is going through the power
 2 plant, generally? Is that during the irrigation
 3 season or during the nonirrigation season?
 4 A. During the storage season.
 5 Q. And to you, the storage season means?
 6 A. October 1 through -- it's defined in
 7 the contracts. It's the springtime.
 8 Q. To your knowledge, the Minidoka Power
 9 Plant, have all of the water rights for Minidoka
 10 Power Plant ever been fully utilized all at one
 11 time? Do you know?
 12 A. I don't know for a fact. I assume
 13 yes.
 14 Q. Do you believe the Bureau has
 15 documentation that would answer that question?
 16 A. I would expect so.
 17 Q. And what kind of documentation would
 18 you expect there to be?
 19 A. Well, it would be flow records.
 20 MS. McHUGH: I don't have any further
 21 questions. Thank you.
 22 THE WITNESS: Thank you.
 23 MR. STANISH: Do you want to go last?
 24 MR. TUCKER: Do you want to go?
 25 MR. STANISH: I just got a couple.

1 MR. TUCKER: I don't care.
 2
 3 EXAMINATION
 4 BY MR. STANISH:
 5 Q. This is David Stanish, for the record.
 6 Rich, I just had a couple questions
 7 about the power-loss provisions of the Palisades
 8 contracts.
 9 Who were the beneficiaries of those
 10 payments in 1968 and '69?
 11 A. Well, it's actually the Minidoka Power
 12 Plant that is the beneficiary of those payments.
 13 Q. Okay. And where did the money go at
 14 that point in time?
 15 A. Well, the -- the money goes to the
 16 United States. And I'm afraid I don't know enough
 17 about the accounting system to give you a direct
 18 answer. The concept is it's supposed to go to the
 19 power plant, to the -- to offset the costs
 20 associated with the power plant.
 21 Q. And those members of the reserve power
 22 pool that benefit in some way from these payments,
 23 who does that include?
 24 A. There's -- I -- there's a number --
 25 there are a number of irrigation districts

1 throughout the state of Idaho that are in the
 2 southern Idaho pool.
 3 Q. Uh-huh.
 4 A. They include, I believe, Black Canyon,
 5 you know, in the Boise Basin as well as in the
 6 Upper Snake area. And the number 11 sticks in my
 7 mind, but -- I think that's the number, but I may
 8 be wrong on that. 11 districts.
 9 Q. It's more than just the Minidoka
 10 Irrigation project?
 11 A. Yes, it is.
 12 Q. Okay. A question Mr. Ling just asked,
 13 I just want to clear it up for the record. You
 14 said something different to Mr. Simpson.
 15 He asked whether it was your
 16 understanding that there had been no subordination
 17 to anything other than storage for irrigation.
 18 And I believe you said yes.
 19 A. I don't think I meant to say yes.
 20 Q. What did you mean to say?
 21 A. Well, we better make sure we got the
 22 question right.
 23 Q. Okay. When you're talking about
 24 subordination of the 2700 cfs historically, was it
 25 to storage in the reservoir system in general or

1 storage or reservation storage of water for a
 2 specific purposes?
 3 A. We've considered it to be storage,
 4 period.
 5 Q. Okay.
 6 A. We have not tried to separate out the
 7 purposes, if you will.
 8 Q. Okay. That's what I was looking for.
 9 A. Yeah.
 10 Q. Okay. I believe Ms. McHugh just asked
 11 you a question of what your understanding of what
 12 the term "storage season" meant.
 13 And what was your answer to that?
 14 A. It's in the contracts. The contracts
 15 define the storage season.
 16 Q. So is it your understanding that the
 17 limitation that you're posing on summary judgment
 18 would only apply during those times as specified
 19 in the contract?
 20 A. Well, that's the only time it makes a
 21 difference, to my knowledge, because in the --
 22 during the irrigation season, the downstream water
 23 rights are pulling more than that amount of water
 24 through the power plant.
 25 Q. Uh-huh. But you are aware that

1 sometimes during the, quote/unquote, "irrigation
2 season" there is storage accruing to the
3 reservoirs?

4 A. Yes.

5 Q. And you believe that would continue to
6 occur?

7 A. Let's make sure I understand. Could
8 we start over again? During the storage season?

9 Q. Right. Or during the irrigation
10 season.

11 A. During the irrigation season? During
12 the irrigation season, at the tail end of the
13 season and sometimes -- and at the beginning of
14 the season, there may be -- the reservoirs may be
15 in priority.

16 MR. STANISH: Okay. I think that's all I
17 have. Thank you.

18 MR. TUCKER: Could we take five minutes?

19 THE WITNESS: Okay.

20 (Recess.)

21
22 EXAMINATION

23 BY MR. TUCKER:

24 Q. My name is Jim Tucker, for the record,
25 here for Idaho Power Company.

1 Mr. Rigby -- Rich, if I can call you
2 Rich, if you don't mind?

3 A. I don't mind.

4 Q. I've got a few questions. Again, as
5 Mr. Ling said, I will try not to go over plowed
6 ground, so to speak, and be quick as I can.

7 Just for clarification for my purposes
8 and the record, you indicated that you've been in
9 the northwest division since 1978.

10 Have you spent all your time in Boise?

11 A. Yes.

12 Q. I wasn't clear on what your position
13 is with the Bureau of Reclamation.

14 A. Well, my title is special assistant to
15 the regional director.

16 Q. Okay. So in that context you answer
17 to --

18 A. Bill McDonald.

19 Q. -- Bill McDonald?

20 Okay. I'm going to start by referring
21 you to the status report that's part of
22 Mr. Jarvis' affidavit, I think Exhibit A. I just
23 had a couple of questions about that.

24 A. Okay.

25 Q. First of all, beginning on page 2,

1 you've testified here today that there were
2 various measures which you believe to be
3 necessary, I guess, for definition of these water
4 rights that we're talking about today.

5 And I notice on page 2 that there's, I
6 think, nine measures that are referred to there
7 that, as I read this document, were, at least at
8 the time of the Palisades authorization, the
9 Bureau thought was necessary to have resolved
10 before Palisades could go forward; is that
11 correct?

12 A. Well, I kind of think, Jim, that
13 these -- this really identifies the universe
14 that -- of the compromise. For example, if you'll
15 look at item 6, that's talking about the
16 distribution of American Falls' space. It was
17 uncontracted storage in American Falls.

18 Q. All right.

19 A. And part of the deal was who gets that
20 extra space, that uncontracted space. So I look
21 at the nine items that are listed as sort of
22 bracketing the entire compromise that was made at
23 the time.

24 Q. Okay. Do you know or can you tell me
25 which of those nine items that are identified in

1 that paragraph are referenced or were part of the
2 Eagle decree?

3 A. Well, I can tell you probably some
4 that were, maybe. I'll try to.

5 Q. Okay.

6 A. No. 1, elimination of winter water
7 use.

8 No. 2, the curtailment of the use of
9 water for power at Minidoka Dam.

10 3 is the coordinated operation of the
11 reservoir system, and I don't know the answer to
12 that. I don't know that it's in there.

13 Q. Okay.

14 A. Uniform storage holdover provisions, I
15 don't know that that's in there.

16 Permitted exchange of contract storage
17 rights between American Falls and Jackson, that is
18 in the decree.

19 6, we've talked about.

20 7, the recognition of existing rights
21 to the diversions made during periods of flood
22 flow, that's in the Eagle decree.

23 And 8, the commitment of Palisades
24 users to allow the reservoir to be pooled with the
25 next 300,000 acre-feet of storage added to the

1 but also other contract holders who might object
2 to someone else's contract; is that fair?
3 A. Yes, I think so. Yes.
4 Q. Okay. Do you have an understanding
5 yourself of what happens to the Eagle decree after
6 subsequent decrees are entered in this court, the
7 SRBA court, with respect to these various water
8 rights?

9 MR. GEHLERT: I'll object. It calls for a
10 legal conclusion.

11 MR. TUCKER: Yeah, it does call. I'm
12 asking for his understanding.

13 THE WITNESS: Well, I don't have an
14 understanding.

15 Q. (BY MR. TUCKER): You don't know?

16 A. No.

17 Q. Okay. You testified that, again, in
18 your view, that the provisions of the Eagle decree
19 perhaps are not necessary to move forward into
20 this decree because they've essentially set the
21 status quo, and that we're now operating under
22 that status quo; is that --

23 A. That's correct.

24 Q. Is that a correct representation?

25 A. That's correct.

1 Q. If it were the case -- and I'll give
2 you a hypothetical -- if it were the case that by
3 not transposing the provisions of the Eagle decree
4 into this decree, that the people that Reclamation
5 sought to bind in that previous proceeding were
6 not then bound, would your view be different?

7 A. I'd have to have a better
8 understanding. I would need to talk that through,
9 and it's kind of a hypothetical question. And
10 I -- the answer is maybe.

11 Q. Okay. I jumped off course here. But
12 referring back to the paragraph here that we've
13 talked about, the second to last paragraph on
14 page 6 of Exhibit A to Mr. Jarvis' affidavit, as I
15 read that paragraph, one of the other
16 considerations for the Eagle decree was to ensure
17 that the distribution or administration of water
18 in the state was essentially inconsistent with
19 those contracts that you had negotiated and placed
20 in the Eagle decree.

21 Do you agree with that?

22 A. You know, I don't think I do. Let
23 me -- I -- I think the -- as I said earlier, the
24 Section 8 of the Reclamation Act of 1902 basically
25 puts administration of water rights in the hands

1 of the State.

2 That's a very important provision for
3 Reclamation. We understand it's there, and we
4 understand we have to live by it.

5 We certainly want and expect the State
6 to treat Reclamation fairly, as they do other
7 holders of water rights. But I don't think
8 Reclamation has attempted to tell the State how to
9 do its business.

10 Now, with respect to the storage
11 reservoirs and the specific operations, that's
12 where we had to get those issues resolved. For
13 example, you know, the best one, I keep going back
14 to it, is the winter water savings clauses that
15 gave preference storage to the people that
16 participated. Those kinds of things affected the
17 State's administration, and we wanted to make sure
18 that was there.

19 Q. Okay. Is that --

20 A. That's it.

21 Q. Okay. I missed the last series of
22 depositions, but I was present at Mr. Olenichak's
23 question, and I asked this question there because
24 I don't quite, and still don't understand. And he
25 wasn't much help. I asked him whether he knew

1 under the Eagle decree what the common plan was.
2 And he professed not to have heard of the common
3 plan, and I don't have any reason not to believe
4 that.

5 But can you explain to me under the
6 Eagle decree what the common plan is?

7 A. I think I can.

8 Q. Wonderful.

9 A. But I have to say in jest that I'm a
10 little chagrined to say that it looks like Bill
11 Burpee was the guy that came up with the term.

12 Q. It's a Reclamation term.

13 A. Thanks so much.

14 MR. STANISH: Argumentative.

15 THE WITNESS: But the common plan or the
16 elements of the plan, it's not a mysterious black
17 box, it's just what was contemplated in the
18 contracts. And I think we already went through it
19 with the nine elements.

20 Q. (BY MR. TUCKER): The nine elements?

21 A. That, to me, is the common plan.

22 Q. Is there anything in addition to those
23 nine elements that you would consider, that
24 Reclamation would consider as part of the common
25 plan?

1 A. I don't think so.

2 Q. Okay. And the common plan, again, in
3 my, you know, simplistic characterization was a
4 plan or methodology for operating the Snake
5 reservoirs I want to say in unison, that's not
6 correct, but collectively?

7 A. As a unit, yes.

8 Q. Okay. Going back to, again, the
9 paragraph on page 6, and I'll read to you what, at
10 least in my view, gives the indication that there
11 was some at least desire to have the Eagle decree,
12 or at least part of the reason for Eagle decree
13 was to ensure that the State administered in a
14 manner consistent with the common plan.

15 That paragraph reads -- and I'll start
16 from the beginning -- "It was recognized in the
17 negotiations that led to the water savings and
18 exchange arrangements necessary for the
19 construction of Palisades Reservoir that those
20 arrangements would require adjustments in the
21 court decrees that govern the distribution of
22 water."

23 Now, I'm assuming the distribution of
24 water is the same as the administration of water.

~~25 So as I read that paragraph, again, in my view,~~

1 one of reasons for the Eagle decree was to
2 solidify, bind the State, so to speak, that the
3 water would be administered consistent with the
4 common plan.

5 Now, after reading that, do you still
6 have a different view of that?

7 A. I haven't read anything in what I've
8 read that says that Reclamation had concerns or
9 issues with respect to how the State would
10 administer water rights, except the specific
11 things that we've talked about already.

12 Q. Okay. And maybe we're talking past
13 each other here. I'm not trying to get you to say
14 or indicate that Reclamation had a dispute with
15 the State. It's a matter of integrating the
16 common plan into the administration of the Snake
17 River.

18 A. And I have seen -- I just haven't seen
19 anything -- and I've read a fair amount -- that
20 says that Reclamation was trying to lock in
21 administration, water rights administration, or
22 anything like that. I just haven't seen any
23 discussion on that.

24 Q. Yeah. Okay. Well, being unable to
25 convince you of that, I'll move on.

1 Now, in one question Mr. Simpson
2 asked, I think he asked you about the project's
3 authorization, and you, as I saw it, kind of put
4 up a stop sign and said "It is what it is, and
5 we're not here to redefine the project
6 authorizations." And I don't say that we are.

7 But by that I take it that there's no
8 intent by the Bureau of Reclamation or the United
9 States through the SRBA and their claims in the
10 SRBA to in any way change the project's
11 authorization?

12 A. That's correct.

13 Q. And in fact, I would, you know, ask
14 whether or not it's your view that the SRBA could
15 change the project authorization?

16 A. Well, I don't -- I think we'd have a
17 real problem if that were the case.

18 Q. And if we could look at this
19 paragraph 24, which I'm sure you knew I would get
20 to.

21 A. Okay.

22 Q. I understand from your testimony here
23 today that -- I'll give you a chance to get it.
24 I'm sorry.

25 A. It's okay. All right.

1 Q. I understand from your testimony here
2 earlier today that you interpret the language of
3 the first sentence, third line, I think, at least
4 on my version, where it talks about "...pass
5 through enough water to satisfy existing diversion
6 rights," in your view those are diversion rights
7 of the Twin Falls North Side Canal Company?

8 A. Yes, sir.

9 Q. Which I understand you've indicated
10 you do not believe they're claimed in the SRBA?

11 A. Correct.

12 Q. And for that reason it was concluded
13 by Reclamation not to include that phrase in the
14 negotiated language which is now in 217, 218?

15 A. Correct.

16 Q. Okay. Right below that it talks about
17 includes, it has an "and," and it says,
18 "...certain power rights below Milner Dam."

19 And that, as I understand it in your
20 view, reflects an intent or at least refers to the
21 1923 contract --

22 A. Correct.

23 Q. -- between Idaho Power and the Bureau
24 of Reclamation?

25 A. Yes.

Exhibit D

**SPACEHOLDER CONTRACT
AMONG
THE UNITED STATES,
THE AMERICAN FALLS RESERVOIR DISTRICT,
AND
IDAHO POWER COMPANY
FOR STORAGE IN THE
AMERICAN FALLS REPLACEMENT DAM
AND FOR
CONSTRUCTION AND OPERATION
AND MAINTENANCE OF THE
AMERICAN FALLS REPLACEMENT DAM PROGRAM**

Dated as of March 31, 1976

**SPACEHOLDER CONTRACT AMONG THE UNITED STATES,
THE AMERICAN FALLS RESERVOIR DISTRICT, AND
IDAHO POWER COMPANY
FOR STORAGE IN THE AMERICAN FALLS REPLACEMENT DAM
AND FOR CONSTRUCTION AND OPERATION AND MAINTENANCE
OF THE AMERICAN FALLS REPLACEMENT DAM PROGRAM**

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**SPACEHOLDER CONTRACT AMONG THE UNITED STATES,
THE AMERICAN FALLS RESERVOIR DISTRICT, AND
IDAHO POWER COMPANY
FOR STORAGE IN THE AMERICAN FALLS REPLACEMENT DAM
AND FOR CONSTRUCTION AND OPERATION AND MAINTENANCE
OF THE AMERICAN FALLS REPLACEMENT DAM PROGRAM**

THIS SPACEHOLDER CONTRACT, made this 31st day of March, 1976, among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States", acting through the Regional Director, Pacific Northwest Region, Bureau of Reclamation, upon authorization of the Secretary of the Interior and pursuant to Section 3 of the Act of Congress approved December 28, 1973 (87 Stat. 904) the AMERICAN FALLS RESERVOIR DISTRICT, an instrumentality of the State of Idaho, with its offices in Twin Falls, Idaho, hereinafter referred to as the "Constructing Agency"; and IDAHO POWER COMPANY, a corporation organized under the laws of the State of Maine, authorized to do business in the State of Idaho, with its principal office therein located in Boise, Idaho, hereinafter called "Spaceholder", when referring to it in its capacity as a Spaceholder pursuant to Section 3 of the Act of December 28, 1973 and called the "Idaho Power Company" when referring to it in its capacity as the entity contracting to utilize for power generation at the Powerplant the water released from the Replacement Dam;

WITNESSETH THAT:

EXPLANATORY RECITALS

2. WHEREAS, the United States has constructed the Existing Dam of the Minidoka Project pursuant to the Federal Reclamation Laws primarily for the furnishing of water for irrigation purposes and, due to alkali-aggregate reactions in the concrete portions of the Existing Dam, the United States is operating the Existing Dam at less than full active capacity; and

3. WHEREAS, continued operation at less than full active capacity could result in irrigation water shortages to some 900,000 acres of land which obtain a water supply from the Existing Dam; and

4. WHEREAS, the active capacity in the Existing Dam is held by Waterusers which desire that the Existing Dam be replaced at the earliest possible time; and

5. WHEREAS, the United States and the Spaceholder are parties to that certain contract hereinafter referred to as the "Existing Spaceholder Contract" dated June 15, 1923, symbol and No. Ilr-733, wherein the Spaceholder conveyed to the United States certain lands and water rights and obtained the right to use the stored water accruing to 2.6471% of the active water storage capacity of the Existing Dam as well as other rights relating to the use of water for power generation; and

6. WHEREAS, the Constructing Agency pursuant to the Act of December 28, 1973, desires to undertake the replacement of the Existing Dam on behalf of all the Spaceholders by financing and constructing the American Falls Replacement Dam Program and to issue Bonds to finance all or part of the costs thereof pursuant to the provisions of Chapter 22, Title 43, Idaho Code, as amended, and upon substantial completion thereof to transfer title to the Replacement Dam to the United States to be operated and maintained primarily for the furnishing of water for irrigation purposes as a feature of the Minidoka Project; and

7. WHEREAS, the Waterusers have advanced monies, and the Constructing Agency has employed engineers, and done those things necessary in the preparation of plans, designs and specifications, in order to begin work on the American Falls Replacement Dam Program; and

8. WHEREAS, pursuant to the provisions of the Act of December 28, 1973, the United States has entered into a contract of even date herewith with the Constructing Agency ("Government Contract") which Government Contract authorizes the Constructing Agency to finance and provide for the construction of the American Falls Replacement Dam Program; and

9. WHEREAS, the Idaho Power Company heretofore proposed to pay an amount necessary to amortize at a tax exempt interest rate in 40 approximately equal annual installments, \$19,550,000 of the costs of financing and constructing the American Falls Replacement Dam Program and subsequently further agreed to increase such amount by the cost of the Water Quality Facilities, and if necessary by

approximately 50% of the costs of financing and constructing the American Falls Replacement Dam Program in excess of \$38,000,000; and

10. WHEREAS, the Constructing Agency pursuant to the Act of December 28, 1973, entered into a Falling Water Contract of even date herewith with the Idaho Power Company to utilize for power generation at the Powerplant the water released from the Replacement Dam (which utilization shall be subordinate to the furnishing of water for irrigation purposes) in consideration for the Falling Water Payments in order to pay part of the costs of financing and constructing the American Falls Replacement Dam Program and the Federal Power Commission has granted to the Idaho Power Company a License to construct, operate, and maintain the Powerplant attached to the Replacement Dam for such purpose; and

11. WHEREAS, the United States is responsible for the construction of specific facilities for public recreation and fish and wildlife enhancement in accordance with Section 7 of the Act of December 28, 1973; and

12. WHEREAS, the Constructing Agency and the Idaho Power Company have entered into the Water Quality Facilities Agreement of even date herewith attached hereto as *Exhibit A* providing for the construction, operation, and maintenance of the Water Quality Facilities; and

13. WHEREAS, Section 3 of the Act of December 28, 1973, provides in part that the Secretary and the Constructing Agency may enter into contracts with the Waterusers for the repayment of their proportionate share of the costs incurred by the Constructing Agency for engineering, financing, designing and constructing the replacement of the Existing Dam and that the delivery of water to the Waterusers shall be contingent upon the execution of Spaceholder Contracts and the fulfillment of the obligations thereunder; and

14. WHEREAS, the Constructing Agency is responsible under the Government Contract and the Falling Water Contract for the preparation of the plans for the American Falls Replacement Dam Program in order to accomplish the replacement of the Existing Dam as contemplated in Section 3 of the Act of December 28, 1973; and

15. WHEREAS, an appropriate number of the Waterusers satisfactory to the Secretary and the Constructing Agency have entered into Spaceholder Contracts of even date herewith to pay their proportionate share of the cost of the American Falls Replacement Dam Program; and

16. WHEREAS, the Spaceholder desires to repay its proportionate share of the costs of financing and constructing the American Falls Replacement Dam Program and has, as required by law, authorized the execution hereof; and

17. WHEREAS, the Spaceholder will pay its proportionate share of operation and maintenance costs associated with the Replacement Dam, the Related Facilities, and the Water Quality Facilities;

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

PART I

DEFINITIONS AND TERM

(Articles 18-19)

DEFINITIONS

18. The following terms, whenever used in this Spaceholder Contract, shall have the following respective meanings:

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

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

"Advisory Committee" shall mean the committee known as the "Committee of Nine", or its successors.

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

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

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

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

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

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

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

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

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

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

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

"Cost of Construction" shall mean all or part of the total cost of the engineering, financing, designing and constructing of the American Falls Replacement Dam Program, and all expenses preliminary and incidental thereto, including all engineering, fiscal, and legal expenses, and costs of issuance, printing and advertising, as authorized in the Act of December 28, 1973 and the State Act and for which funds may be disbursed from the Construction Fund pursuant to Article 20(c) hereof.

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

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

"Existing Spaceholder Contract" shall mean that certain contract dated June 15, 1923, symbol and No. 11r-733, between the United States and the Spaceholder.

"Falling Water Contract" shall mean the contract of even date herewith entitled "Falling Water Contract by and between American Falls Reservoir District and Idaho Power Company", as the same may be supplemented or amended.

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

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

"Idaho Power Company" shall mean the Idaho Power Company, a Maine corporation authorized to do business in the State of Idaho, and its permitted successors and assigns, acting in the capacity as the entity contracting to utilize for power generation at the Powerplant the water released from the Replacement Dam.

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

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

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

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

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

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

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

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

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

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

"Schedule of Spaceholder Bond Payments" shall mean that schedule supplied to the Spaceholder, pursuant to the provisions of Section 9.8 of the Falling Water Contract, showing the annual sums to be paid to the Trustee for deposit into the Bond Fund under the Indenture.

"Secretary" shall mean the Secretary of the Interior.

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

"Spaceholder" shall mean the Idaho Power Company, a Maine corporation authorized to do business in the State of Idaho, acting in the capacity of a Spaceholder pursuant to Section 3 of the Act of December 28, 1973.

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

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

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

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

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

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

"Spaceholder Replacement Dam Operation and Maintenance Payments" shall mean the payments obligated to be made hereunder by the Spaceholder to the United States to pay the annual costs of operation and maintenance of the Replacement Dam and the Related Facilities and to return the unpaid costs of the Existing Dam as set forth in Article 28(c) hereof.

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

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

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

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

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

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

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

PURPOSE AND TERM

19. (a) This Spaceholder Contract is entered into in accordance with Section 3 of the Act of December 28, 1973, to provide for repayment by the Spaceholder of its proportionate share of the total costs incurred by the Constructing Agency for engineering, financing, designing, and constructing the replacement of the Existing Dam by financing and constructing the American Falls Replacement Dam Program. Nothing herein shall in any way alter or change the present proportionate storage rights of the Spaceholder, and this Spaceholder Contract and the American Falls Replacement Dam Program constitute a reaffirmation by the United States of the rights of the Spaceholder under the Existing Spaceholder Contract, except as modified by this Spaceholder Contract as authorized in the Act of December 28, 1973, and in the Government Contract. The provisions of the Existing Spaceholder Contract shall in all respects remain in full force and effect except that the provisions of this Spaceholder Contract with respect to the Replacement Dam, including but not limited to the operation and maintenance thereof and the distribu-

tion of water therefrom, shall prevail over the provisions of the Existing Placeholder Contract wherever and to whatever extent the provisions of the Existing Placeholder Contract are in conflict with the provisions of this Placeholder Contract. The provisions of the Existing Placeholder Contract which have application to any other reserved works of the Minidoka Project shall, in all respects, continue in effect and shall continue to apply to any other reserved works of the Minidoka Project. Due to events which have occurred since the execution of the Existing Placeholder Contract, the United States and the Placeholder recognize that certain provisions of the Existing Placeholder Contract may no longer be applicable, and it is the intention of the United States and the Placeholder to subsequently meet and review the Existing Placeholder Contract for possible revision.

(b) After execution by the Constructing Agency and Placeholder, this Placeholder Contract shall become effective upon execution by the Contracting Officer and shall remain in effect unless terminated as provided in Articles 19(c) or 29 hereof.

(c) If the Government Contract is terminated as provided in Article 9(b) or 9(c) thereof, this Placeholder Contract shall be deemed terminated and of no further force and effect. In the event of the termination of the Government Contract pursuant to Article 9(c) thereof, the Placeholder's relationship with the United States, as it relates to the Existing Dam, shall be governed by the terms and conditions of the Existing Placeholder Contract, except that the Placeholder shall be obligated to pay its proportionate share of the costs expended or incurred by the Constructing Agency for the engineering, financing, designing, and planning of the construction of the American Falls Replacement Dam Program.

PART II

AMERICAN FALLS REPLACEMENT DAM PROGRAM AND SPACEHOLDER STORAGE CAPACITY

(Articles 20-21)

AMERICAN FALLS REPLACEMENT DAM PROGRAM

20. (a) The American Falls Reservoir District is the "Constructing Agency" contemplated in Section 1 of the Act of December 28, 1973, and in the Government Contract which is authorized to finance and construct the American Falls Replacement Dam Program in order to replace the Existing Dam.

(b) The Constructing Agency has entered into the Government Contract under authority contained in the Act of December 28, 1973, and will issue its Bonds under authority contained in the State Act and pursuant to the Indenture to finance and construct the American Falls Replacement Dam Program. Pursuant to the provisions of Article 10(a) of the Government Contract, the Constructing Agency is responsible for the preparation of the plans for the American Falls Replacement Dam Program. Such plans for the Replacement Dam shall be substantially in accordance with the construction plans for the Replacement Dam contemplated at the Engineering Review Session in San Francisco, California, on October 8 and 9, 1974, and shall provide, among other things, for the following:

(1) The construction of a Replacement Dam having:

- (i) a reservoir with an active capacity of 1,700,000 acre-feet;
- (ii) a spillway, outlet works, and power penstocks capable of passing an approved design flood without exceeding a maximum water surface elevation of 4,354.5 feet above mean sea level U.S.C.&G.S. datum;
- (iii) a two-lane highway on the crest of the Replacement Dam adequate to meet the then current United States Department of Transportation Standards for Federal-Aid Secondary Highway Two-Lane Traffic;

(iv) appropriate controls of spillway, intake, and sluiceway gates for operation of the Replacement Dam in the event of an emergency at the Powerplant; and

(v) sufficient portions of the Existing Dam removed to permit evacuation of the total active capacity of the Replacement Dam at a satisfactory rate to permit full utilization of the storable water.

(2) The construction of the Related Facilities.

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

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

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

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

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

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

(c) The Cost of Construction of the American Falls Replacement Dam Program shall consist of:

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

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

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

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

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

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

deemed necessary in connection with the construction of the American Falls Replacement Dam Program by the Constructing Agency, or any one or more of said expenditures;

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

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

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

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

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

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

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

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

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

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

(d) The Constructing Agency has entered into the Falling Water Contract with Idaho Power Company in accordance with Section 4 of the Act of December 28, 1973, and has entered into Spaceholder Contracts with an appropriate number of the Waterusers satisfactory to the Secretary in accordance with Section 3 of the Act of December 28, 1973, in order to finance the construction of the American Falls Replacement Dam Program. The Constructing Agency will use its best efforts to authorize, pursuant to the provisions of the State Act as then in force, and issue the Bonds in an amount which shall be sufficient to pay the Cost of Construction of the American Falls Replacement Dam Program not prepaid

by the Spaceholders and when issued such Bonds shall be payable solely from a special fund into which the Constructing Agency will be obligated to deposit the Spaceholder Bond Payments made by the Spaceholder pursuant to the provisions of the State Act representing its respective proportionate share of the Cost of Construction and allocated to the Spaceholder by the Constructing Agency pursuant to the requirements of the State Act if the Spaceholder does not exercise its right to prepay its obligation hereunder as provided in Article 23 hereof. The Constructing Agency covenants and agrees with the Contracting Officer and the Spaceholder that all Falling Water Payments and Supplemental Falling Water Payments received from the Idaho Power Company pursuant to the Falling Water Contract and all Spaceholder Bond Payments received from the Spaceholders pursuant to the Spaceholder Contracts will be assigned to the Trustee for deposit into the Bond Fund created in the Indenture for the purpose of paying principal of, premium, if any, and interest on the Bonds.

STORAGE CAPACITY TO BE MADE AVAILABLE TO SPACEHOLDER

21. (a) The United States will continue to operate and maintain the Existing Dam during the construction of the Replacement Dam and upon substantial completion of such construction will operate and maintain the Replacement Dam.

(b) The United States will continue to make available to the Spaceholder stored water accruing to 2.6471% of the active capacity of the Replacement Dam unless the Spaceholder is in default under the terms and conditions of the Existing Spaceholder Contract or this Spaceholder Contract.

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

PART III

SPACEHOLDER COST OBLIGATIONS, PREPAYMENT, AND SPACEHOLDER PAYMENTS

(Articles 22-27)

SPACEHOLDER COST OBLIGATION

22. In consideration of the preservation, restoration, protection, and maintenance of the rights of storage, diversion and delivery of water from the Replacement Dam resulting from the construction of the American Falls Replacement Dam Program by the Constructing Agency, the Spaceholder, pursuant to the provisions of Section 3 of the Act of December 28, 1973, shall pay its proportionate share of the total cost of engineering, financing, designing, and constructing the American Falls Replacement Dam Program as set forth in Article 20(c) hereof and which is assigned to the Spaceholder by the Constructing Agency pursuant to the State Act, either by prepayment as permitted under Article 23 hereof or by electing to make Spaceholder Bond Payments as permitted under Article 24 hereof.

Pursuant to the State Act, the Constructing Agency has authorized the issuance of \$44,750,000 principal amount of Bonds to pay the Cost of Construction of the American Falls Replacement Dam Program. In accordance with the provisions of Section 8.3 of the Falling Water Contract, the Authorized Representatives will, after receipt of construction bids, prepare an estimate of such cost. If such construction bids are accepted, the Constructing Agency will issue an initial series of the Bonds in an amount sufficient to pay the estimated costs. Additional Bonds for completion purposes will be issued by the Constructing Agency, if necessary, to pay the total costs which are over the estimated costs, either by selling the balance of the authorized but as yet unissued Bonds or by authorizing an additional issue of Bonds in accordance with the applicable provisions of the State Act as then in force. The obligation of

the Spaceholder to pay its proportionate share of the total cost of the American Falls Replacement Dam Program is set forth in this Part III.

PREPAYMENT

23. (a) The Spaceholder shall have the option, until 10 days from and after the Constructing Agency shall give notice to the Spaceholder of the expiration of the prepayment period, to prepay the principal amount of \$576,651, without interest, to the Constructing Agency for deposit by the Constructing Agency into the Prepayment Fund to be established by the Constructing Agency and to be used by the Constructing Agency solely for the purpose of paying the proportionate share of the Spaceholder of the total Cost of Construction of the American Falls Replacement Dam Program. If the Constructing Agency does not issue its Series 1976 Bonds, the Constructing Agency shall cause the prepayment to be returned to the Spaceholder, without interest. In accordance with the provisions of Section 8.3 of the Falling Water Contract, after the final estimated cost of the American Falls Replacement Dam Program has been determined and the amount of the Series 1976 Bonds to be initially issued has been determined, the Constructing Agency on or prior to the delivery of the Series 1976 Bonds, shall transfer from the Prepayment Fund into the Construction Fund that portion of the Spaceholder's prepayment so deposited into the Prepayment Fund as is shown on the schedule of the obligation of the Spaceholder to be filed with the Spaceholder in accordance with the provisions of Section 8.3 of the Falling Water Contract. If additional Bonds are issued pursuant to the provisions of Section 9.10 of the Falling Water Contract, the Constructing Agency, on or prior to the delivery of such Additional Bonds, shall transfer from the Prepayment Fund to the Construction Fund that portion of the Spaceholder's prepayment shown on the schedule contemplated to be filed with the Spaceholder in accordance with the provisions of Section 8.6 of the Falling Water Contract.

(b) At such time as the Secretary shall have given notice in accordance with Article 14(d) of the Government Contract that the construction of the Replacement Dam, the Related Facilities and the Water Quality Facilities has been completed, and the Authorized Representatives shall have determined the total costs of the American Falls Replacement Dam Program as provided in Section 7.10 of the Falling Water Contract and filed with the Trustee the certificate contemplated in Section 603 of the Indenture, the Constructing Agency shall cause the Trustee to return to the Spaceholder that portion, if any, of the prepayment made by the Spaceholder under Article 23(a) hereof which remains in the Construction Fund and which was not utilized by the Constructing Agency for the purposes of paying the cost of the American Falls Replacement Dam Program. The Constructing Agency shall return to the Spaceholder that portion, if any, of the prepayment made by the Spaceholder under Article 23(a) hereof which remains in the Prepayment Fund and which was not utilized by the Constructing Agency for the purpose of paying the cost of the American Falls Replacement Dam Program.

(c) All prepayments collected by the Constructing Agency under Article 23(a) of this Spaceholder Contract shall be placed in a separate account to be known as the "Prepayment Fund" by the Constructing Agency, to be held and used in accordance with the provisions of the Spaceholder Contracts and the Falling Water Contract. The Prepayment Fund shall be established in The Idaho First National Bank, Twin Falls, Idaho, and the Authorized Representatives shall cause an annual audit of the Prepayment Fund to be made and a copy of each such annual audit to be supplied upon request to each Spaceholder which prepaid its obligation pursuant to the provisions of Article 23(a) hereof.

SPACEHOLDER BOND PAYMENTS

24. (a) If the Spaceholder does not make the prepayment within the time and in the manner as permitted under Article 23(a) hereof, it shall be deemed that the Spaceholder has elected to pay the principal amount of its proportionate share of the total Cost of Construction of the American Falls Replacement Dam Program, plus applicable interest, in 40 approximately equal annual installments to be shown on the Schedule of Spaceholder Bond Payments to be furnished to the Spaceholder by the Authorized Representatives in accordance with the provisions of Section 9.8 of the Falling Water

Contract or as such Schedule of Spaceholder Bond Payments may be revised in the event that Additional Bonds are issued by the Constructing Agency pursuant to either Section 9.10 or Section 9.11 of the Falling Water Contract. Unless sooner terminated as provided in Article 19(c) hereof, and subject only to the issuance by the Constructing Agency of its Bonds, the Spaceholder shall pay the Spaceholder Bond Payments on April 1 of each of the years as shown on the Schedule of Spaceholder Bond Payments to be filed with the Spaceholder directly to the Trustee for the account of the Constructing Agency, in lawful money of the United States, at the Trustee's address shown in the Indenture, or at such other place as the Trustee from time to time shall designate. The Spaceholder shall pay to the Trustee annually at the same time as it pays the Spaceholder Bond Payments that portion of the yearly fees, charges and expenses of the Trustee and any paying agent bank contemplated in Section 1002 of the Indenture, not paid from funds in the Bond Fund and as are assigned to the Spaceholder by the Authorized Representatives.

(b) Any amounts remaining in the Bond Fund after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture) and the fees, charges and expenses of the Trustee and paying agents in accordance with the Indenture and all other amounts required to be paid under the Spaceholder Contracts, the Falling Water Contract and the Indenture, shall be paid to the Constructing Agency in accordance with Section 14.9 of the Falling Water Contract. Such amounts shall be distributed to the Spaceholders which did not prepay in accordance with their respective interests.

ARBITRAGE

25. (a) The Constructing Agency and the Spaceholder hereto covenant and represent to each other that:

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

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

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

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

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

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

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

(2) On the basis of the foregoing certifications and representations, it is not expected by either the Constructing Agency or the Spaceholder that the proceeds of the Bonds will be used in a manner that would cause the Bonds to be classified as an "arbitrage bond" under Section 103(d) of the Internal Revenue Code of 1954, as amended, and the regulations promulgated under that section; that to the best knowledge and belief of the Constructing Agency and the Spaceholder, there are no facts or circumstances that would materially change the foregoing conclusion.

(b) The Constructing Agency and the Spaceholder jointly and severally covenant that so long as any of the Bonds shall remain outstanding and any provision in this Spaceholder Contract or the Indenture to the contrary notwithstanding with respect to an investment of monies, whether such monies were derived from the proceeds of the Bonds, or from any other source, no use will be made of such monies which, if such use could have been reasonably expected on the date of the issue of the Bonds, would have caused the Bonds to be classified as an "arbitrage bond" within the meaning of Section 103(d) of the Internal Revenue Code of 1954, as amended, and further jointly and severally covenant to comply with the requirements of said Section 103(d) and any regulations promulgated thereunder.

REFUNDING BONDS

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

ADDITIONAL BONDS

27. (a) If it is determined necessary for the Constructing Agency to issue all or part of the balance of any authorized but as then unissued Bonds, the Constructing Agency will, to the extent then legally permitted, issue and sell a series of Additional Bonds as permitted under Section 207 of the Indenture for completion purposes and the Schedule of Spaceholder Bond Payments shall be increased in accordance with the provisions of Section 9.8 and Section 9.10 of the Falling Water Contract.

(b) If the amount of the Bonds which has been initially authorized, together with any prepayments, is not sufficient to complete the payment of the total cost of the American Falls Replacement Dam Program, the Constructing Agency will, to the extent then legally permitted, issue and sell a series of Additional Bonds in excess of the initial authorization as permitted under Section 207 of the Indenture for completion purposes. In recognition of the Spaceholder's obligation under the Act of December 28, 1973, to pay its proportionate share of the total cost of the American Falls Replacement Dam Program not paid pursuant to the Falling Water Contract, the Spaceholder shall cause supplements to the Spaceholder Contract to be executed with the Contracting Officer and the Constructing Agency and may elect to prepay or to make additional Spaceholder Bond Payments. The Schedule of Spaceholder Bond Payments shall be increased in accordance with the provisions of Section 9.11 of the Falling Water Contract for all Spaceholders which do not prepay.

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

(d) If the Constructing Agency shall issue a series of Additional Bonds, pursuant to the provisions of Section 207 of the Indenture, as contemplated in Sections 9.10 and 9.11 of the Falling Water Contract, for the purpose of paying the costs of completing the construction of the American Falls Replacement Dam Program not paid from the proceeds of the Series 1976 Bonds, and the Constructing Agency thereafter levies additional assessments and enters into supplementary Spaceholder Contracts with the Spaceholders increasing the amount of Spaceholder Bond Payments obligated to be made to the Constructing Agency by the Spaceholders for the purpose of repaying the Cost of Construction of the American Falls Replacement Dam Program, the Idaho Power Company shall be obligated to make

Supplemental Falling Water Payments representing the obligations of the Spaceholder for the increased amounts if there is a default by the Spaceholder in the payments of such increased amounts attributable to such Additional Bonds for completion purposes and shall be entitled to the use of stored water of the Defaulted Spaceholder all in accordance with the provisions of Section 3.4 of the Falling Water Contract.

PART IV OPERATION AND MAINTENANCE

(Article 28)

28. (a) Upon substantial completion of construction of the Replacement Dam and the Related Facilities, the United States will operate and maintain the Replacement Dam and the Related Facilities as a part of the Minidoka Project for the beneficial use of the water on the land within the service areas of the Spaceholders pursuant to Section 8 of the Reclamation Act of June 17, 1902 (32 Stat. 388).

(b) Commencing with the year the first Spaceholder Bond Payments are due, the Spaceholder Replacement Dam Operation and Maintenance Payments shall be paid by the Spaceholder to the United States and shall be (7.1388%) of the total cost of operation and maintenance of the Existing Dam during the Construction of the Replacement Dam and of the Replacement Dam and the Related Facilities not paid by the Idaho Power Company pursuant to Section 10.6 of the Falling Water Contract. Such costs shall be determined in accordance with the applicable provisions of the Existing Spaceholder Contract and shall continue to be due and payable to the United States on or before April 1 of each calendar year under procedures established therein, except that the operation and maintenance charge notice shall be furnished to the Spaceholder on or before February 20 of the calendar year for which the notice is issued.

(c) The United States has allocated for return from power revenues \$293,978.17 of the costs of constructing the Existing Dam which amount has been excluded from the existing repayment obligations of the Spaceholders. The Spaceholder shall pay its proportionate share of the annual amount necessary to return this sum in 40 years to the United States, such share to be in accordance with the percentage in Article 21(b) hereof. The annual payments will be made as part of the Spaceholder Replacement Dam Operation and Maintenance Payments, unless the Secretary is authorized to find that this obligation need not be assumed by the Spaceholders.

(d) Pursuant to Article 15(b) of the Government Contract, the United States shall continue an annual program for the correction and prevention of erosion related to the Replacement Dam or for the full and adequate compensation of adjacent landowners, including owners of land subject to a flowage easement for the Replacement Dam, if such erosion cannot be corrected or prevented. The costs thereof shall be billed to the Spaceholder as a part of the Spaceholder Replacement Dam Operation and Maintenance Payments as provided in (c) of Article 15 of the Government Contract.

(e) The Replacement Dam will be operated by the United States pursuant to the operating criteria set forth in Article 16 of the Government Contract in a manner so that (1) the present proportionate storage rights of the Spaceholders shall not be altered or changed except as provided in the Government Contract and in the Spaceholder Contracts, (2) the water surface elevation of the Replacement Dam shall not exceed a maximum of 4354.5 feet above mean sea level U.S.C.&G.S. datum, and (3) the primary irrigation purpose and the incidental purposes of the Minidoka Project shall not be impaired by the subordinate utilization for power generation at the Powerplant of the water released from the Replacement Dam. The United States is not obligated to operate the Replacement Dam in a manner to have water in the Replacement Dam at elevations for power generation or to operate to increase the head in the Replacement Dam for power generation.

(f) (1) The Water Quality Facilities are included as a part of the American Falls Replacement Dam Program and pursuant to Article 15(a) of the Government Contract the Constructing Agency is responsible for the operation and maintenance of the Water Quality Facilities. The Constructing Agency

has provided for the operation and maintenance of the Water Quality Facilities in the Water Quality Facilities Agreement attached hereto as Exhibit A, to the provisions of which the Spaceholder consents and agrees as if the Water Quality Facilities Agreement were set forth in full herein and made a part hereof.

(2) The Spaceholder shall pay on or before April 1 of each calendar year, the Spaceholder Water Quality Facilities Operation and Maintenance Payments to the Constructing Agency, at its office or at such other place from time to time designated by the Constructing Agency, on the basis of annual billings by the Constructing Agency submitted to the Spaceholder on or before February 20 commencing with the year in which it is anticipated that the Water Quality Facilities will become operational. The Spaceholder Water Quality Facilities Operation and Maintenance Payments shall consist of: (i) (0%) of the obligation of the Spaceholders, excluding Idaho Power Company, to pay the costs of operation and maintenance of the Water Quality Facilities under Paragraph 13 of the Water Quality Facilities Agreement; and (ii) (7.1388%) of the obligation of the Spaceholders, including Idaho Power Company, to pay the cost of the audit and other incidental costs incurred in the administration of the Water Quality Facilities Operation and Maintenance Fund under Paragraph 13 of the Water Quality Facilities Agreement.

(3) The Constructing Agency shall not bill Non-Participating Waterusers or Spaceholders for the operation and maintenance costs of the Water Quality Facilities which are assignable to the space of Non-Participating Waterusers and shall maintain accountings of such amounts that are assignable to the space of Non-Participating Waterusers until a permanent disposition of the water accruing to the space of a Non-Participating Wateruser has been made as provided in the Government Contract.

PART V

DEFAULT AND REMEDIES

(Articles 29-31)

DEFAULT

29. (a) Failure by the Spaceholder to make all or any part of any Spaceholder Payment required to be made pursuant to the provisions of Articles 24 and 28 hereof at the times and places specified in this Spaceholder Contract and (i) continuation of said failure for a period of 5 days after notice by telegram or, in the alternative, after notice by mail given to the Spaceholder by the Constructing Agency, or the Trustee on behalf of the Constructing Agency, or the Contracting Officer that the payment referred to in such notice has not been received, or (ii) continuation of said failure for a period of 12 days, shall constitute a default under the provisions of this Spaceholder Contract. Notice of any such default shall be given to, or as the case may be, by the Contracting Officer, the Constructing Agency and the Trustee, and to the Idaho Power Company and to the Spaceholder within 7 days after such default has occurred. Inasmuch as the delivery of water from the Replacement Dam to the Spaceholder is contingent upon the continued fulfillment of its obligations under this Spaceholder Contract, upon receipt of such notice of default or upon failure to receive in full any Spaceholder Replacement Dam Operation and Maintenance Payment, the Contracting Officer shall withhold the delivery of the water to the Spaceholder from the Existing Dam or from the Replacement Dam accruing to the space of the Spaceholder, for the year in which such default occurs and until such time as the Contracting Officer determines that the default has been cured as provided in (c) of this Article.

(b) If the Spaceholder is deemed to be a Defaulted Spaceholder, the Contracting Officer shall make the water accruing to the space of the Defaulted Spaceholder available for use in the year in which the default occurs: first, for irrigation water use by other Spaceholders not in default; second, for irrigation water use by a person or entity which is not a Spaceholder; and third, for use by the Contracting Officer. In no event shall such water be made available for use by a Defaulted Spaceholder or a Non-Participating Wateruser in such year. Charges for such use shall be at least sufficient to pay the

Spaceholder Payments, or any portion thereof, including interest and penalties, due on behalf of the Spaceholder. If the Contracting Officer does not arrange for the use of such space as provided herein on or before May 15 of such year, such space will be made available by the Contracting Officer to the Idaho Power Company for power generation subject to the provisions of Article 18(b) of the Government Contract, in return for the payment by the Idaho Power Company of Supplemental Falling Water Payments pursuant to the Falling Water Contract in order to prevent a default in the payment of the principal of and interest on the Bonds of the Constructing Agency and in order to pay the balance of the Spaceholder Payments then due.

(c) At any time on or before the April 1 next succeeding any default under (a) of this Article, the Defaulted Spaceholder may cure the default by paying to the Contracting Officer: (i) the amount of the Spaceholder Bond Payment which is in default, plus a penalty consisting of 1% per month; (ii) the amount of the Spaceholder Replacement Dam Operation and Maintenance Payment which is in default, plus a penalty consisting of 1% per month; and (iii) the amount of the Spaceholder Water Quality Facilities Operation and Maintenance Payment which is in default, plus a penalty consisting of 1% per month. Thereafter, so long as the Spaceholder is not in default hereunder, the Spaceholder shall be entitled to the use of the water from the Existing Dam or from the Replacement Dam accruing to the space of the Spaceholder in years subsequent to the year in which the default occurred.

(d) Any monies received by the Contracting Officer pursuant to (b) or (c) of this Article in excess of those required to meet all or any part of the Spaceholder Payments including interest and penalties which is in default and which is due on behalf of the Defaulted Spaceholder under the provisions of this Spaceholder Contract or to reimburse the Idaho Power Company for Supplemental Falling Water Payments, including interest, shall be applied by the Contracting Officer toward future operation and maintenance costs of the Spaceholders on the Replacement Dam and the Related Facilities.

(e) The Contracting Officer shall give notice to the Spaceholder on or before December 31 of the year in which a default hereunder has occurred and is continuing, that if the Spaceholder remains in default hereunder and does not cure the default on or prior to the next succeeding April 1 as provided in (c) of this Article, this Spaceholder Contract shall, on April 2, be terminated and the United States will no longer make available to the Defaulted Spaceholder the stored water described in Article 21(b) hereof. If the default is not cured by the Defaulted Spaceholder within the time specified in the foregoing notice, this Spaceholder Contract shall be terminated as provided in such notice, and the Spaceholder thereafter shall have no right, title or interest in, to or with respect to storage capacity in the Existing Dam or the Replacement Dam, but if at the time of such termination the Idaho Power Company shall then be in default in the payment of Falling Water Payments or Supplemental Falling Water Payments under the Falling Water Contract, the Spaceholder shall remain liable as provided in Article 30 hereof.

REMEDIES ON DEFAULT

30. Whenever a default referred to in Article 29 hereof shall have happened and be subsisting, but only if the Idaho Power Company shall then be in default in the payment of Falling Water Payments or Supplemental Falling Water Payments under the Falling Water Contract and if this Spaceholder Contract has not theretofore been terminated as provided in Article 29 hereof:

(a) the Constructing Agency, or the Trustee on behalf of the Constructing Agency, or the Contracting Officer, may take any one or more of the following remedial actions in addition to those provided in Article 29 hereof.

(1) In the event of the termination of this Spaceholder Contract as provided in Article 29(e) hereof, the Constructing Agency or the Trustee, as provided in the Indenture, or the Contracting Officer, shall forthwith, notwithstanding any other provision of this Spaceholder Contract to the contrary, be entitled to recover in accordance with their respective interests from the Defaulted Spaceholder, as and for liquidated damages (in lieu of all other claims for damages on account of such termination) and not as a penalty, an amount equal to the unpaid amount of the Spaceholder Replacement Dam Operation and Maintenance Payment, and amount equal to the unpaid amount

of the Placeholder Water Quality Facilities Operation and Maintenance Payment and an amount equal to that portion of the unpaid principal amount of the Bonds then outstanding as defined in the Indenture which would be required to be paid by the Placeholder under the provisions of Article 24 hereof.

(2) The Placeholder agrees that, in addition to its other obligations under this Placeholder Contract, upon demand it will pay to the Trustee, the Constructing Agency and the Contracting Officer all expenses incurred in connection with any suspension of the use of water and any grant of the suspended rights to another person, and that the Placeholder will be and remain liable to make all Placeholder Payments, when due, required to be made by the Placeholder hereunder, without regard to any such suspension and as if any suspended rights exercised by another person were exercised by the Placeholder. The Constructing Agency, or the Trustee acting on behalf of the Constructing Agency, or the Contracting Officer, shall have the right from time to time to begin and maintain successive proceedings against the Placeholder for the recovery of damages or for a sum equal to all or any part of any Placeholder Payments and any other payments required to be made by the Placeholder pursuant to this Placeholder Contract, and to recover the same upon the liability of the Placeholder herein provided.

(3) Any amounts collected pursuant to action taken under this Article shall be paid into the Bond Fund and must be applied in accordance with the provisions of the Indenture, except that any amounts remaining after all payments required to be made under the Indenture have been made may be applied by the Constructing Agency to payment of the operation and maintenance expenses of the Water Quality Facilities and by the Contracting Officer to the operation and maintenance of the Replacement Dam.

(b) No suspension of any or all of the Placeholder's rights to the use of the water from the Replacement Dam accruing to the space of the Placeholder shall be construed as an election on the part of the Constructing Agency, the Trustee, or the Contracting Officer to terminate the Placeholder's interest in, to and under this Placeholder Contract unless a notice of intention be given to the Placeholder or such termination be decreed at the instance of the Constructing Agency, the Trustee or the Contracting Officer by a court of competent jurisdiction.

NO REMEDY EXCLUSIVE

31. (a) No right or remedy herein conferred upon or reserved to the Constructing Agency, or to the Trustee on behalf of the Constructing Agency, or the Contracting Officer, is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing, upon the occurrence of a default hereunder. The failure of the Constructing Agency, or the Trustee on behalf of the Constructing Agency, or the Contracting Officer, to insist at any time upon the strict observance or performance by the Placeholder of any of the provisions of this Placeholder Contract, or to exercise any right or remedy provided for in this Placeholder Contract, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof for the future. Receipt by the Trustee, on behalf of the Constructing Agency, of any Placeholder Bond Payment, receipt by the Contracting Officer of any Placeholder Replacement Dam Operation and Maintenance Payment, or receipt by the Constructing Agency of any Placeholder Water Quality Facilities Operation and Maintenance Payment, with knowledge of the breach of any provisions of this Placeholder Contract, shall not be deemed a waiver of such breach. In addition to all other remedies provided in this Placeholder Contract, the Constructing Agency or the Trustee on behalf of the Constructing Agency, or the Contracting Officer, shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the provisions of this Placeholder Contract, or to a decree concerning performance of any of the provisions of this Placeholder Contract, or to any other remedy legally allowed to the Constructing Agency, or to the Trustee on behalf of the Constructing Agency, or to the Contracting Officer.

(b) The Constructing Agency, or the Trustee on behalf of the Constructing Agency, or the Contracting Officer, may take whatever action at law or in equity may appear necessary or desirable to collect

all or any part of the Spaceholder Payments payable by Spaceholder hereunder, then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Spaceholder under this Spaceholder Contract.

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

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

(e) Any waiver by a party of its rights with respect to a default under this Spaceholder Contract, or with respect to any other matter arising in connection with this Spaceholder Contract, shall not be deemed to be a waiver with respect to any other matter arising in connection with this Spaceholder Contract. No delay in asserting or enforcing any rights by the Contracting Officer, Constructing Agency, or the Trustee hereunder shall be deemed a waiver of such rights.

PART VI

GENERAL PROVISIONS

(Articles 32-51)

BOOKS, RECORDS, AND REPORTS

32. Reports on water usage and to other matters related to the American Falls Replacement Dam Program which the Contracting Officer may require shall be furnished to the United States in such form and on such date or dates as the Contracting Officer may require. Pursuant to applicable Federal laws and regulations each party shall have the right during office hours to examine and make copies of each other's books and records relating to matters covered by this Spaceholder Contract.

RULES, REGULATIONS, AND DETERMINATIONS

33. (a) The Contracting Officer, after an opportunity has been offered to the Constructing Agency and Spaceholder for consultation, shall have the right to make rules and regulations consistent with the provisions of the Government Contract and this Spaceholder Contract and the laws of the United States, to add to or to modify such rules and regulations as may be deemed proper and necessary to carry out this Spaceholder Contract, and to supply necessary details of its administration which are not covered by express provisions of this Spaceholder Contract. Such rules and regulations shall (1) not limit the right of the Spaceholder to the stored water pursuant to the provisions of this Spaceholder Contract so long as the Spaceholder is not in default hereunder, and (2) not limit the right of the Constructing Agency under the laws of the State of Idaho to collect the Falling Water Payments or the Supplemental Falling Water Payments under the Falling Water Contract or the Spaceholder Bond Payments and the Spaceholder Water Quality Facilities Operation and Maintenance Payments under this Spaceholder Contract. The Spaceholder and the Constructing Agency shall observe such rules and regulations.

(b) Where the terms of this Placeholder Contract provide for action to be based upon the opinion or determination of any party to this Placeholder Contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Constructing Agency or Placeholder questions any factual determinations made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Constructing Agency and Placeholder and shall be conclusive upon the parties.

WATER AND AIR POLLUTION

34. The Placeholder shall, within its legal authority, comply fully with all applicable Federal laws, orders, and regulations, and the laws of the State of Idaho, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, groundwater, or water courses with respect to thermal pollution, dissolved gases or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts or other pollutants, and concerning the pollution of the air. The United States is under no obligation to operate, maintain, or replace the Water Quality Facilities or to construct or to acquire water treatment facilities in order to maintain or to better the quality of the water stored in, released, or downstream from the Replacement Dam as a result of the construction, operation, and maintenance of the Replacement Dam.

NO LIABILITY FOR WATER SHORTAGE OR INTERRUPTIONS

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

CHANGES IN ORGANIZATION OF SPACEHOLDER

36. While this Placeholder Contract is in effect, no change shall be made in the organization of the Placeholder by dissolution, consolidation or merger, except upon the compliance with Section 12.4 of the Falling Water Contract.

ALL BENEFITS CONDITIONED UPON PAYMENT

37. The Placeholder shall use all the authority and resources of the Placeholder to meet the obligations of the Placeholder under the Existing Placeholder Contract and this Placeholder Contract.

ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

38. (a) The provisions of this Placeholder Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Placeholder Contract or any part thereof or interest therein by the Placeholder shall be valid until approved by the Contracting Officer

and by the Trustee but only so long as any of the Bonds are outstanding and unpaid. The assignment to the Trustee of the Spaceholder Bond Payments shall not be considered such an assignment or transfer.

(b) No instrument of transfer or assignment shall be executed unless the successor, assignee or transferee Spaceholder shall agree to assume all obligations of the Spaceholder hereunder including making the Spaceholder Payments.

(c) So long as any of the Bonds are outstanding and unpaid, the Trustee and the Idaho Power Company shall be given 30 days notice prior to the execution of any instrument of transfer or assignment.

TITLE VI, CIVIL RIGHTS ACT OF 1964

39. (a) The Spaceholder agrees that it will comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241) and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Spaceholder receives financial assistance from the United States and hereby gives assurance that it will immediately take any measures to effectuate this Spaceholder Contract.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Spaceholder by the United States, this assurance obligates the Spaceholder, or in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates the Spaceholder for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Spaceholder for the period during which the Federal financial assistance is extended to it by the United States.

(c) This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the Spaceholder by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Spaceholder recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the Spaceholder, its successors, transferees, and assignees.

ELECTION COSTS—AUTHORIZING RESOLUTION

40. (a) The Spaceholder recognizes that the costs of the American Falls Replacement Dam Program include the costs of any election at which the Bonds of the Constructing Agency were authorized and the confirmation proceedings required to authorize the Constructing Agency to proceed in accordance with the provision of the Act of December 28, 1973, and the State Act to finance and construct the American Falls Replacement Dam Program.

(b) A copy of the appropriate resolution and minutes of the meetings of the Board of Directors of the Spaceholder authorizing the execution of this Spaceholder Contract shall be certified and furnished to the Contracting Officer and the Constructing Agency.

OFFICIALS NOT TO BENEFIT

41. No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Spaceholder Contract or to any benefit that may arise herefrom. This restriction

shall not be construed to extend to this Spaceholder Contract if made with a corporation or company for its general benefit.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

42. The expenditure or advance of any money or the performance of any work by the United States hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate funds or the absence of any allotment of funds shall not relieve the Spaceholder from any obligations under this Spaceholder Contract. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

ADVANCED MONIES

43. Upon the filing with the Trustee of a written statement of the Authorized Representatives in conformity with the provisions of Section 602 of the Indenture, the Trustee shall repay to the Spaceholder from the Construction Fund such monies, if any, which have been and may be hereafter, prior to the delivery of the Bonds, advanced to the Constructing Agency to pay costs of the American Falls Replacement Dam Program, as contemplated in Article 20(c) hereof, plus interest on the principal amount of such advancement at the rate of 6½ % per annum.

DISCLAIMER AND RELEASE

44. The Spaceholder further acknowledges that the approved plans, designs and specifications for the American Falls Replacement Dam Program are in the best interest of the Spaceholder, and the Spaceholder hereby waives any and all rights, claims or causes of action which the Spaceholder may have against the Constructing Agency or the Contracting Officer by reason of the loss of use of storage space or storage water in any year during the construction of the American Falls Replacement Dam Program which might have otherwise been available to the Spaceholder if said construction had not been undertaken.

ADVISORY COMMITTEE

45. In its operation and maintenance of the Replacement Dam and the other various dams and reservoirs of the Minidoka Project, the United States, acting through the Regional Director of the Bureau of Reclamation or his designee or such other officer as may be designated in writing by the Secretary, shall consult from time to time with the Advisory Committee on the various matters specifically requiring consultation under the terms of this Spaceholder Contract and on such other matters as will have a substantial bearing on the determination of the amount of stored water to be available in the various reservoirs in the Minidoka Project and on the costs of operation and maintenance of those reservoirs which are required to be borne by the space allocated to irrigation storage, all as provided in the Existing Spaceholder Contract.

AUTHORIZED SPACEHOLDER REPRESENTATIVE

46. (a) Recognizing the need to coordinate the construction of the Powerplant with the Construction of the American Falls Replacement Dam Program, the interests of the Spaceholders in effecting construction cost savings which will result in minimizing their Spaceholder Bond Payments and as a means of securing effective cooperation between the Constructing Agency and the Contracting Officer, and among the Constructing Agency, the Idaho Power Company and the Spaceholders in resolving,

on a prompt and orderly basis, the various administrative, technical, financing, construction, ownership and operating issues which may arise in connection with the performance of the Falling Water Contract, the Spaceholder Contracts, and the Water Quality Facilities Agreement, the Constructing Agency, the Idaho Power Company and the Spaceholders shall each name an Authorized Representative. Each Authorized Representative shall be authorized by the party or parties by whom he is designated to act on their behalf with respect to those matters herein provided to be responsibilities of the Authorized Representative.

(b) The Authorized Spaceholder Representative shall be elected for a one year term by a majority vote of the Spaceholders, excluding the Constructing Agency and the Idaho Power Company, at a meeting of the Spaceholders called for that purpose by the Authorized Constructing Agency Representative. Each Spaceholder shall be entitled to one vote for each acre-foot of storage space to which such Spaceholder is entitled in the Replacement Dam. The Idaho Power Company and the Constructing Agency shall be advised promptly of the designation of the Authorized Spaceholder Representative. The Constructing Agency, the Idaho Power Company and the Spaceholders shall each have the power to appoint an alternate Authorized Representative.

(c) The responsibilities of the Authorized Representatives prior to the completion date (as defined in the Falling Water Contract) shall be: (i) to approve the award of any construction or equipment contract in connection with the American Falls Replacement Dam Program; (ii) to establish general policies to be followed in the administration of the Falling Water Contract, in the construction of the American Falls Replacement Dam Program as it relates to the Falling Water Contract, and, to the extent such policies are relevant to the subject matter of the Falling Water Contract in the construction of the Powerplant; (iii) to establish general policies and practices to be followed in the administration and coordination of the construction of the Powerplant with the construction of the Replacement Dam; (iv) to consult with the Contracting Officer concerning any policies which might hereafter be required among the Constructing Agency, the Idaho Power Company, the Spaceholders, and the Contracting Officer, or any of them, concerning the Construction of the American Falls Replacement Dam Program or the construction of the Powerplant; (v) to establish procedures for consultation with respect to notices received by the Constructing Agency from the Contracting Officer under Article 12(d) of the Government Contract; and (vi) to do such other things as are specifically assigned to the Authorized Representatives during the construction period.

(d) The responsibilities of the Authorized Representatives after the completion date (as defined in the Falling Water Contract) shall be limited to: (i) matters pertaining to the collection and payment of the Spaceholder Bond Payments, the Spaceholder Water Quality Facilities Operation and Maintenance Payments, the Falling Water Payments, and the Supplemental Falling Water Payments, to the extent necessary; (ii) consultation concerning any policies which might hereafter be required among the Contracting Officer, the Constructing Agency, the Idaho Power Company and the Spaceholders, or any of them, concerning operation and maintenance of the Water Quality Facilities and payment of the costs thereof as provided in the Spaceholder Contracts and the Water Quality Facilities Agreement; and (iii) collection of and payment by the Idaho Power Company and the Spaceholders of the fees, charges and expenses of the Trustee and any paying agent bank contemplated in Section 1002 of the Indenture.

(e) The establishment of any procedure or practice and any other action or determination by the Authorized Representatives shall be made by unanimous agreement to become effective when signed by each of the Authorized Representatives.

(f) The Authorized Representatives shall have no authority to modify any of the provisions of the Falling Water Contract, the Spaceholder Contracts, the Government Contract, or the Water Quality Facilities Agreement, nor shall they establish policies, rules, or regulations which are not in accordance with policies, rules, or regulations established by the Contracting Officer with respect to the construction of the American Falls Replacement Dam Program or the operation and maintenance of the Replacement

Dam, the Related Facilities or the Water Quality Facilities or which conflict with the approved plan of construction, the Plan of Operation, or the designs and specifications.

(g) With respect to all matters contemplated in Article IX of the Falling Water Contract, the Constructing Agency shall consult with the Authorized Representatives in connection with the issuance of the Bonds, however, the Constructing Agency shall at all times comply with the State Act in the performance of its duties contemplated hereunder in connection with the issuance of the Bonds. The Constructing Agency shall conform to any public bidding requirements applicable to it in connection with the construction of the American Falls Replacement Dam Program.

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

PROHIBITION AGAINST AMENDMENT

47. Subsequent to the sale of the Bonds of the Constructing Agency, and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Spaceholder Contract may not be effectively supplemented, amended, changed, modified, altered or terminated without the written consent of the Trustee and of the Contracting Officer, nor may the Existing Spaceholder Contract be effectively supplemented, amended, changed, modified, altered or terminated in any way so as to adversely affect the obligation of the Spaceholder to make Spaceholder Bond Payments hereunder without the written consent of the Trustee, or so as to adversely affect the obligation of the Spaceholder to make Water Quality Facilities Operation and Maintenance Payments without the consent of the Constructing Agency.

STATUS OF EXISTING SPACEHOLDER CONTRACT

48. This Spaceholder Contract is supplemental and in addition to the Existing Spaceholder Contract between the United States and the Spaceholder as to the Replacement Dam, as set out in Article 19(a) hereof.

ACKNOWLEDGMENT AS TO WATER RIGHTS

49. The Spaceholder acknowledges that the water storage rights evidenced by permits, licenses and court decrees for the Existing Dam are held in the name of the United States and by this Spaceholder Contract the water rights are reaffirmed and neither the United States, the Constructing Agency or the Spaceholders are required to make additional filings for the Replacement Dam.

NOTICES; MANNER OF GIVING; DUPLICATE COPIES TO CONTRACTING OFFICER AND TRUSTEE

50. Any notice, demand, or request authorized or required by this Spaceholder Contract shall be deemed to have been given when mailed, postage prepaid, or delivered to the Regional Director, Pacific Northwest Region, Bureau of Reclamation, Box 043, 550 West Fort Street, Boise, Idaho 83724, on behalf of the United States, and to the Secretary of the Constructing Agency, 1132 Locust Street, Twin Falls, Idaho 83301, on behalf of the Constructing Agency. Notices required by this Spaceholder Contract to be given to the Spaceholder shall be deemed to have been given when mailed, postage prepaid, or delivered to 550 West Fort Street, Boise, Idaho 83724. Notices required by this Spaceholder Contract to be given to the Idaho Power Company shall be deemed to have been given when mailed, postage prepaid, or delivered to the President of the Idaho Power Company, 1220 Idaho Street, Boise, Idaho

83701, on behalf of the Idaho Power Company. Notices required by this Spaceholder Contract to be given to the Trustee shall be deemed to have been given when mailed, postage prepaid, or delivered to the Corporate Trust Office of the Trustee on behalf of the Trustee. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

EFFECTIVE DATE OF THIS CONTRACT

51. Notwithstanding the execution hereof, this Spaceholder Contract shall not be effective until the Government Contract has been executed. The Contracting Officer shall give immediate notice thereof to the Spaceholder and the Constructing Agency.

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

UNITED STATES OF AMERICA

By: /s/ RODNEY J. VISSIA
Regional Director

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

AMERICAN FALLS RESERVOIR DISTRICT

By: /s/ JOHN M. BARKER
President

Attest:

/s/ DIANNE BRIDEGUM
Secretary (SEAL)

SPACEHOLDER

By: /s/ JAMES E. BRUCE
President

Attest:

/s/ PAUL L. JAUREGUI
Secretary (SEAL)

STATE OF IDAHO }
COUNTY OF ADA } ss.

On this 31st day of March, in the year 1976, before me, Gary E. Carlen, a Notary Public, personally appeared Rodney J. Vissia, known to me to be the Regional Director, Pacific Northwest Region, Bureau of Reclamation, United States Department of the Interior, that executed the said instrument, and acknowledged to me that the United States of America executed the same.

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

/s/ GARY E. CARLEN

Notary Public in and for the State of Idaho

Residing at: Boise, Idaho

My commission expires: 5-5-79

(SEAL)

STATE OF IDAHO }
COUNTY OF ADA } ss.

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

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

/s/ MARY L. MORTON

Notary Public in and for the State of Idaho

Residing at: Boise, Idaho

My commission expires: 4-1-76

(SEAL)

STATE OF IDAHO }
COUNTY OF ADA } ss.

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

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

/s/ JOHN A. ROSHOLT

Notary Public in and for the State of Idaho

Residing at: Twin Falls, Idaho

My commission expires: 1979

(SEAL)

EXHIBIT A

WATER QUALITY FACILITIES AGREEMENT

Dated as of March 31, 1976

by and between

AMERICAN FALLS RESERVOIR DISTRICT

and

IDAHO POWER COMPANY

**WATER QUALITY FACILITIES AGREEMENT
BY AND BETWEEN
AMERICAN FALLS RESERVOIR DISTRICT
AND
IDAHO POWER COMPANY**

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**WATER QUALITY FACILITIES AGREEMENT
BY AND BETWEEN
AMERICAN FALLS RESERVOIR DISTRICT
AND
IDAHO POWER COMPANY**

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

WITNESSETH:

2. WHEREAS, the Government Contract and the Spaceholder Contracts provide that the Constructing Agency shall be responsible for the construction, operation and maintenance of the Water Quality Facilities which will be included in the American Falls Replacement Dam Program; and

3. WHEREAS, as a part of the consideration pursuant to the Falling Water Contract for the utilization for power generation at the Powerplant of the water released from the Replacement Dam the Idaho Power Company has agreed to operate and maintain the Water Quality Facilities for the Constructing Agency and to make certain payments as hereinafter set forth; and

4. WHEREAS, the Constructing Agency and the Idaho Power Company desire to delineate herein their respective obligations for the financing, ownership, construction, operation and maintenance of the Water Quality Facilities; and

5. WHEREAS, this Water Quality Facilities Agreement is the agreement contemplated to be entered into by the Constructing Agency in Article 15(a) of the Government Contract;

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

6. *Definitions.* All terms used herein shall have the same meanings as defined in Article 18 of the Spaceholder Contracts.

7. *Representations of Idaho Power Company.* The Idaho Power Company represents and warrants as follows:

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

(b) The authority of the Idaho Power Company to enter into this Water Quality Facilities Agreement and to carry out its obligations contemplated hereunder is subject to the obtaining, by the Idaho Power Company, of approvals by any and all state and Federal regulatory agencies having jurisdiction thereof, and the Idaho Power Company covenants that it will use its best efforts to obtain such approvals.

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

(a) The Constructing Agency is a lawfully organized and existing irrigation district, pursuant to the provisions of Title 43, Idaho Code, as amended by the State Act, and has been such since

June 1, 1923. The Constructing Agency is the "Constructing Agency" which is authorized to finance and provide for the construction of the American Falls Replacement Dam Program pursuant to the provisions of the Act of December 28, 1973, and the provisions of the Government Contract.

(b) The Constructing Agency is authorized to enter into this Water Quality Facilities Agreement for the purpose of accomplishing the construction of a portion of the American Falls Replacement Dam Program pursuant to the provisions of the Act of December 28, 1973, the State Act, the Government Contract and the Spaceholder Contracts.

9. *Responsibility to Construct.* The Constructing Agency shall acquire and construct those Water Quality Facilities which are included in the plans for the American Falls Replacement Dam Program and which are approved by the Secretary as contemplated in the Government Contract. The actual cost of the Water Quality Facilities, determined as provided in Section 8.7 of the Falling Water Contract, shall be paid for by the Idaho Power Company either as a part of the Falling Water Payments or as payments required to be made under paragraph 11 of this Water Quality Facilities Agreement.

10. *Conveyance of Title.* The Constructing Agency shall convey title to the Water Quality Facilities to the United States upon the determination of substantial completion of construction thereof contemplated to be made in Article 14(b) of the Government Contract.

11. *Excess Construction Costs.*

(a) If the actual cost of the Water Quality Facilities, determined in accordance with Section 8.7 of the Falling Water Contract, exceeds the estimated cost of the Water Quality Facilities, determined in accordance with Section 8.3 of the Falling Water Contract, the Idaho Power Company shall, on each April 1 following the filing of the actual cost of the Water Quality Facilities with the Idaho Power Company, pay to the Constructing Agency, on behalf of the Spaceholders, for deposit in the Water Quality Facilities Operation and Maintenance Fund hereinafter established, an amount of money which will amortize over the same period and at the same interest rate in the case of (1) and (2) below as the Series 1976 Bonds and in the case of (3) below as the Additional Bonds, as follows:

(1) If Additional Bonds are not issued and the estimated cost of the American Falls Replacement Dam Program is less than or equal to \$38,000,000, the amount by which the actual cost of the Water Quality Facilities exceeds the estimated cost of the Water Quality Facilities;

(2) If Additional Bonds are not issued and the estimated cost of the American Falls Replacement Dam Program is more than \$38,000,000, an amount equal to one-half the amount by which the actual cost of the Water Quality Facilities exceeds the estimated cost of the Water Quality Facilities; or

(3) If one or more series of Additional Bonds are issued pursuant to either Section 9.10 or 9.11 of the Falling Water Contract, the amount by which the increase in the actual over the estimated cost of the Water Quality Facilities exceeds the amount of the Additional Bonds.

(b) All payments by Idaho Power Company made under this paragraph 11 for deposit into the Water Quality Facilities Operation and Maintenance Fund hereinafter established shall inure to the benefit of the Spaceholders excluding Idaho Power Company as herein provided.

12. *Obligation to Operate and Maintain.* The Idaho Power Company shall operate and maintain the Water Quality Facilities for the Constructing Agency in accordance with this Water Quality Facilities Agreement. In the event that the Contracting Officer, pursuant to Article 18(d) of the Government Contract, determines that the water being released from the Replacement Dam through the Powerplant does not meet the amended State of Idaho water quality dissolved oxygen standard, as approved April 17, 1975, by the United States Environmental Protection Agency, after oral notice to the Idaho Power Com-

pany's American Falls Powerplant Chief Operator, the Contracting Officer may bypass part or all of such water around the Powerplant until satisfactory arrangements are made to meet such standard. As soon as practicable after substantial completion of the construction of the Water Quality Facilities, and from time to time thereafter in accordance with actual operating experience, the Constructing Agency, the Idaho Power Company, and the Contracting Officer shall develop, establish and maintain criteria for when the Water Quality Facilities shall be operated, or in lieu thereof water shall be bypassed. Such criteria shall include, among other things, rules and regulations which will provide for placement, reading, and operation of monitoring equipment, for communication among operating personnel, and other details of the operation and maintenance of the Water Quality Facilities not specifically set forth herein. From time to time as such criteria are developed and established, they shall be reduced to writing and copies filed with the Authorized Representatives and the Contracting Officer.

The Idaho Power Company shall also comply with Article 46 of the License, including the maintenance and filing of the records required thereunder.

13. *Financial Responsibility for Operation and Maintenance Costs.*

(a) Under the Spaceholder Contracts, the Spaceholders, excluding Idaho Power Company, are obligated to pay their proportionate share of 50% of the annual cost of operation and maintenance of the Water Quality Facilities, but not to exceed \$62,500 per year. The annual cost of operation and maintenance shall consist of charges for the purchase of oxygen, replacement power, labor and other direct operation and maintenance items. The Spaceholders' obligation to participate in the payment of the annual operation and maintenance cost of the Water Quality Facilities shall terminate upon the retirement of the Bonds, or 40 years from the date of execution of the Falling Water Contract, whichever is later. The Idaho Power Company shall be responsible for the balance of the annual cost of operation and maintenance of the Water Quality Facilities not paid by the Spaceholders hereunder.

(b) All Spaceholders, including Idaho Power Company, shall pay their proportionate share of all annual costs incurred in the audit of the Water Quality Facilities Operation and Maintenance Fund or other incidental costs incurred by the Constructing Agency in the administration of such fund.

(c) Costs for replacement power shall be included as a part of the annual cost of operation and maintenance for the purposes of this paragraph when the estimated projected cost therefor is determined to be less than the estimated projected cost of the injection of oxygen on a projected annual basis. The Authorized Representatives shall make such determinations from time to time and such determinations shall be binding upon the Spaceholders and the Idaho Power Company.

14. *Cost Sharing if Additional Water Quality Facilities are Constructed.* If the Boards of Directors of Spaceholders representing 66⅔% of the total active capacity of the Replacement Dam shall agree by supplement to this Water Quality Facilities Agreement to the construction or acquisition by Idaho Power Company of additional Water Quality Facilities for the purpose of reducing the annual Spaceholder Water Quality Facilities Operation and Maintenance Payments, one-half of the capital cost of such additional Water Quality Facilities shall be repaid to Idaho Power Company by the Spaceholders in the same manner as set out in paragraph 16 hereof and as specified in said supplement; PROVIDED that the total annual obligation of Spaceholders other than Idaho Power Company for Spaceholder Water Quality Facilities Operation and Maintenance Payments and the capital costs of such additional Water Quality Facilities shall not exceed a total of \$62,500 a year. If the total amount of the capital cost of such additional Water Quality Facilities has not been paid in full at the time of the termination of the obligation of Spaceholders to make Spaceholder Water Quality Facilities Operation and Maintenance Payments, the Spaceholders will be under no further obligation to repay Idaho Power Company for any then unpaid portion of the capital cost of such additional Water Quality Facilities.

15. *Establishment of Water Quality Facilities Operation and Maintenance Fund.* All Spaceholder Water Quality Facilities Operation and Maintenance Payments collected by the Constructing

Agency under the Placeholder Contracts shall be placed by the Constructing Agency in a separate account to be known as the "Water Quality Facilities Operation and Maintenance Fund," which is to be held and used in accordance with the provisions of this Water Quality Facilities Agreement. The Constructing Agency shall cause an annual audit of the Water Quality Facilities Operation and Maintenance Fund to be made and a copy of each annual audit shall be transmitted to each Placeholder. The bank holding the Water Quality Facilities Operation and Maintenance Fund shall verify payment by the Constructing Agency of its Placeholder Water Quality Facilities Operation and Maintenance Payment and shall notify the Contracting Officer in writing of failure to receive any such payment when due.

16. *Administration of Water Quality Facilities Operation and Maintenance Fund.* The Constructing Agency shall annually bill and collect in advance the Placeholder Water Quality Facilities Operation and Maintenance Payments from each Placeholder, except Idaho Power Company, in accordance with Article 28 of the Placeholder Contracts. All Placeholder Water Quality Facilities Operation and Maintenance Payments as collected shall be deposited into the Water Quality Facilities Operation and Maintenance Fund. As costs for Water Quality Facilities operation and maintenance are incurred in each twelve month period beginning on April 1 of each year, such costs shall be paid by the Idaho Power Company, monthly statements itemizing such costs shall be sent to the Constructing Agency and the Constructing Agency shall pay, from the monies on deposit in the Water Quality Facilities Operation and Maintenance Fund, one-half of each such statement until the Placeholder's maximum annual obligation of \$62,500 (exclusive of the cost of the audit plus any administrative costs) has been paid. In any year in which the annual Water Quality Facilities operation and maintenance costs are less than the Placeholder's maximum annual obligation of \$62,500, any surplus amount shall be retained in the Water Quality Facilities Operation and Maintenance Fund and such surplus, plus any interest thereon, shall be retained for credit against Placeholder billings in future years. In the event that such Water Quality Facilities Operation and Maintenance Fund shall ever have a balance of \$125,000, or more, no billings shall thereafter be made against any Placeholder until the balance in the Water Quality Facilities Operation and Maintenance Fund shall have been reduced to \$62,500 or less. Any amounts accumulated in the Water Quality Facilities Operation and Maintenance Fund on March 31 of each year in excess of \$125,000 shall be returned to the Placeholder, excluding Idaho Power Company, in accordance with their respective interests. At the termination of the obligation of the Placeholder to participate in the payment of the annual operation and maintenance costs as provided in paragraph 13 (a) of this Water Quality Facilities Agreement any amounts remaining in the Water Quality Facilities Operation and Maintenance Fund shall be returned to the Placeholder, excluding the Idaho Power Company, in accordance with their respective interests.

The Constructing Agency shall not bill Non-Participating Waterusers or Placeholder for the operation and maintenance costs of the Water Quality Facilities which are assignable to the space of Non-Participating Waterusers and shall maintain accountings of such amounts that are assignable to the space of Non-Participating Waterusers until a permanent disposition of the water accruing to the space of a Non-Participating Wateruser has been made as provided in the Government Contract.

17. *Amendment, Supplements, Termination or Assignment.* This Water Quality Facilities Agreement may not be amended, supplemented, terminated or assigned, without the written consent of the Board of Directors of Placeholder representing ownership of 66⅔% of the total active storage capacity in the Replacement Dam, after 30 days written notice has been given to all Placeholder, nor shall this Water Quality Facilities Agreement be amended, supplemented, terminated or assigned without the approval of the Secretary.

18. *Placeholder Third Party Beneficiaries.* The Placeholder are hereby deemed third party beneficiaries of this Water Quality Facilities Agreement only to the extent of enforcing such duties and obligations specifically set forth in paragraphs 9 through 20 hereof.

19. *Term.* This Water Quality Facilities Agreement shall remain in effect during the term of the License, or any continuation or renewal thereof.

20. *Execution in Counterparts.* This Water Quality Facilities Agreement may be executed in several counterparts, each of which shall be an original, and all such shall constitute and be one and the same instrument.

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

AMERICAN FALLS RESERVOIR DISTRICT

By: /s/ JOHN M. BARKER
President

Attest:

/s/ DIANNE BRIDGUM
Secretary

(SEAL)

IDAHO POWER COMPANY

By: /s/ JAMES E. BRUCE
President

Attest:

/s/ PAUL L. JAUREGUI
Secretary

(SEAL)

APPROVED this 31st day of March, 1976

UNITED STATES SECRETARY OF THE INTERIOR

By: /s/ RODNEY J. VISSIA
Regional Director

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

STATE OF IDAHO }
COUNTY OF ADA } ss.

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

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

/s/ JOHN A. ROSHOLT

Notary Public in and for the State of Idaho

Residing at: Twin Falls, Idaho

My commission expires: 1979

(SEAL)

STATE OF IDAHO }
COUNTY OF ADA } ss.

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

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

/s/ MARY L. MORTON

Notary Public in and for the State of Idaho

Residing at: Boise, Idaho

My commission expires: 4-1-76

(SEAL)

Exhibit E



**IDAHO
POWER**

An IDACORP Company

IDAHO POWER COMPANY
P.O. BOX 70
BOISE, IDAHO 83707

JAMES C. TUCKER
Senior Attorney

December 21, 2005

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7000 0520 0024 9023 5014

Idaho Department of Water Resources
Attention: Michael Holliday
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718

RECEIVED
DEC 23 2005
Department of Water Resources
Eastern Region

RE: IDAHO POWER COMPANY CLAIM(S)

Dear Michael:

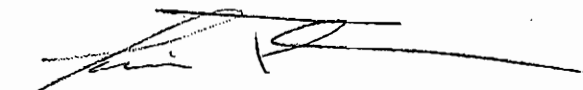
Enclosed for filing please find three late adjudication claims for storage rights at American Falls Reservoir. These claims are identical, with the exception of the basis for the claim. The claims are filed alternatively. Although it is clear that Idaho Power Company has a water right in American Falls Reservoir by virtue of its 1923 contract, the basis of that right is not clear, and must be resolved in the adjudication process.

Your attention is called to Exhibit "A" attached to each claim, which should clarify the reason that three claims are being filed. One claim is based upon Idaho Power Company Permit R-273, on the theory that former director Higginson's 1971 decision was wrong and is not binding upon the SRBA court. One of the claims is based upon the strength of the Bureau of Reclamation's right, Permit #R-269/License #1-2064, on the theory that if the Higginson decision stands, then the Bureau holds Idaho Power Company's 300 kaf in trust under the Higginson decision language. Finally, one claim is filed on the basis of beneficial use, on the theory that even if the Higginson decision effectively cancelled Idaho Power Company's # R-273 permit, the Company has been beneficially using the water and had the right to retain the water right under the 1923 contract with the Bureau.

Also enclosed is a check in the amount of \$225, covering filing fees of \$25 per claim, together with late fees of \$50 per claim.

Please contact the undersigned if you have any questions or concerns about these filings. Thank you for your assistance.

Sincerely,



James C. Tucker

JCT/dkp

Exhibit F

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

In Re SRBA)
Case No. 39576) Subcase Nos. 01-00217, 01-00218
) 01-04024, and 01-04025
) (Minidoka Power Right)
)
) Subcase Nos. 01-02068 and
) 01-04054
) (Palisades Power Rights)

RULE 30(B)(6) DEPOSITION OF THE STATE OF IDAHO
TESTIMONY OF DAVID R. TUTHILL, JR.
and
DEPOSITION OF DAVID R. TUTHILL, JR.

OCTOBER 22, 2009

REPORTED BY:
JEFF LaMAR, C.S.R. No. 640
Notary Public

APPEARANCES (Continued):

1
2
3 For Bureau of Reclamation:
4 (Present Telephonically)
5 UNITED STATES DEPARTMENT OF JUSTICE
6 ENVIRONMENT & NATURAL RESOURCES DIVISION
7 NATURAL RESOURCES SECTION
8 BY MR. DAVE GEHLERT
9 1961 Stout Street, Suite 800
10 Denver, Colorado 80294
11 For Idaho Groundwater Appropriators, Inc.:
12 RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD.
13 BY MS. CANDICE M. McHUGH
14 101 Capitol Boulevard, Suite 208
15 Boise, Idaho 83702
16 For Idaho Department of Water Resources:
17 OFFICE OF ATTORNEY GENERAL
18 BY MR. CHRIS M. BROMLEY
19 322 East Front Street
20 P.O. Box 83720
21 Boise, Idaho 83720-0098
22 ///
23 ///
24 ///
25 ///

1 THE RULE 30(B)(6) DEPOSITION OF THE STATE OF
2 IDAHO, TESTIMONY OF DAVID R. TUTHILL, JR., AND THE
3 DEPOSITION OF DAVID R. TUTHILL, JR., was taken on
4 behalf of American Falls Reservoir District No. 2,
5 at the offices of Barker, Rosholt & Simpson,
6 1010 West Jefferson, Suite 110, Boise, Idaho,
7 commencing at 12:04 p.m., October 22, 2009, before
8 Jeff LaMar, Certified Shorthand Reporter and
9 Notary Public within and for the State of Idaho,
10 in the above-entitled matter.

11 APPEARANCES:
12 For A & B Irrigation District, Burley Irrigation
13 District, Milner Irrigation District, North Side
14 Canal Company, and Twin Falls Canal Company:
15 BARKER, ROSHALT & SIMPSON LLP
16 BY MR. JOHN K. SIMPSON
17 1010 West Jefferson, Suite 102
18 P.O. Box 2139
19 Boise, Idaho 83701-2139
20 For American Falls Reservoir District No. 2:
21 CAPITOL LAW GROUP PLLC
22 BY MR. C. THOMAS ARKOOSH
23 301 Main Street
24 P.O. Box 32
25 Gooding, Idaho 83330

APPEARANCES (Continued):

1
2
3 For State of Idaho:
4 OFFICE OF ATTORNEY GENERAL
5 BY MR. DAVID I. STANISH
6 700 West State Street, 2nd Floor
7 P.O. Box 83720
8 Boise, Idaho 83720-0010
9 For Idaho Power Co.:
10 BROWNSTEIN HYATT FARBER SCHRECK
11 BY MR. JAMES S. LOCHHEAD
12 818 Colorado Avenue, Suite 306
13 P.O. Box 357
14 Glenwood Springs, Colorado 81602-0357
15 For Minidoka Irrigation District:
16 FLETCHER LAW OFFICE
17 BY MR. W. KENT FLETCHER
18 P.O. Box 248
19 Burley, Idaho 83318
20 For Falls Irrigation District:
21 LING LAW OFFICE
22 BY MR. ROGER D. LING
23 615 H. Street
24 PO Box 250
25 Rupert, Idaho 83350-0396

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1 (Exhibit 13 marked.)

2

3 DAVID R. TUTHILL, JR.,

4 first duly sworn to tell the truth relating to

5 said cause, testified as follows:

6

7 EXAMINATION

8 BY MR. ARKOOSH:

9 Q. Would you state your name, please.

10 A. David R. Tuthill, Jr.

11 Q. And did you bring a resumé or a CV,

12 David?

13 A. Yes, I did.

14 Q. How would you like me to address you?

15 A. Dave is fine.

16 MR. ARKOOSH: Okay. Can we have this

17 marked.

18 (Exhibit 14 marked.)

19 Q. (BY MR. ARKOOSH): Dave, I'm going to

20 hand you what's been marked as Exhibit 14.

21 Can you describe that, please.

22 A. This is my resumé.

23 Q. And is it current as of today?

24 A. It is.

25 Q. Okay. And then if you'd look at

1 Exhibit 13, please.

2 A. I would add one thing, that it is

3 current as of June of 2009. Since then I have

4 formed a private consulting company. That's not

5 on this resumé.

6 Q. What's your company?

7 A. Idaho Water Engineering, LLC.

8 Q. And do you do consulting work, as

9 indicated in the name of the company?

10 A. Yes.

11 Q. Okay. And how long does your resumé

12 indicate you were with the Idaho Department of

13 Water Resources?

14 A. 33 1/2 years.

15 Q. Okay. And you left there as director;

16 is that correct?

17 A. Correct.

18 Q. And when was that?

19 A. That was June 30, 2009.

20 Q. Okay. And would you look at

21 Exhibit 13, please.

22 Can you describe what that is.

23 A. It's the amended notice of taking

24 deposition of the State of Idaho.

25 Q. And are you here as the designated

1 Q. Well, that language I just read you
2 adjudicates water to those rights in places of
3 diversion named in there, does it not?
4 A. Yes.
5 Q. Okay. And then let's look at the end
6 of it on page 19, David. And look, if you would,
7 please, look at page 19. Actually, look at
8 page 20, if you would, first. Read paragraph 6,
9 if you would.
10 A. "That the pertinent paragraphs of the
11 contract entered into by the United States of
12 America, Bureau of Reclamation, and the Minidoka
13 Irrigation District, the contents of which
14 paragraphs were confirmed by all other parties
15 Plaintiff in amendatory and supplemental
16 contracts, a copy of which pertinent paragraphs is
17 attached hereto as Exhibit E and by this reference
18 made a part hereof as though set out in full
19 herein, is hereby ratified, confirmed, and
20 approved."
21 Q. Okay. And so that indicates that the
22 contracts identified in the exhibits are as though
23 they were set out in the decree, does it not?
24 A. Yes.
25 MR. STANISH: Calls for a legal conclusion.

1 Q. (BY MR. ARKOOSH): Look at paragraph 4
2 on the prior page, if you would. And if you would
3 read that as well, please.
4 A. "That the contracts entered into
5 between the various parties Plaintiff and the
6 United States of America, Bureau of Reclamation,
7 as the same have been amended and modified, in
8 connection with the Palisades project and other
9 projects, were intended to be and are binding upon
10 all persons claiming rights to the use of the
11 waters of the Snake River and its tributaries,
12 above Milner Dam, and constitute a common plan for
13 the administration of the Snake River."
14 Q. Is it the State's position that
15 language is ambiguous or clear?
16 MR. STANISH: Calls for a legal conclusion.
17 THE WITNESS: I would say that the language
18 is here. And in terms of ambiguity or clarity,
19 this is taken in context with many other issues.
20 So I would say this is guidance information by a
21 court decision that was made in the Eagle case.
22 Q. (BY MR. ARKOOSH): Well, is there any
23 ambiguity in the language that the contracts
24 referred to are binding upon all persons claiming
25 rights to the use of water in the Snake River and

1 its tributaries?
2 MR. STANISH: Calls for a legal conclusion.
3 Q. (BY MR. ARKOOSH): Do you find any
4 ambiguity in that?
5 MR. STANISH: Calls for a legal conclusion.
6 THE WITNESS: In terms of ambiguity, as far
7 as clarity for informing the director's report,
8 this is one element that provides information.
9 Q. (BY MR. ARKOOSH): Okay. You put it
10 in a context I'm not requiring. I just want you
11 to look at the phrase and tell me whether you find
12 it ambiguous.
13 MR. STANISH: Calls for a legal conclusion.
14 I'll also object as it being vague and ambiguous
15 as to what.
16 THE WITNESS: To the narrow extent that
17 this item 4 is part of a decree as a part of the
18 Snake River Basin Adjudication, the statement is
19 clearly written.
20 Q. (BY MR. ARKOOSH): Do you know, David,
21 what the common plan is referred to in that
22 paragraph?
23 A. I -- I have not heard that before
24 seeing it this week, as I looked at the document.
25 Q. Are you aware what the genesis of the

1 Eagle decree was, why it happened? Do you know
2 some of the history of it?
3 A. Only that that's in this decree.
4 Q. Okay. Let me ask you this: The
5 watermaster at the time of District 1, Basin 1,
6 Henry Eagle, was the named party defendant in the
7 Eagle decrees, was he not?
8 A. Yes.
9 Q. So is the watermaster bound in his
10 successors?
11 MR. STANISH: Calls for a legal question.
12 MR. ARKOOSH: Well, let me rephrase the
13 question.
14 Q. Is it the position of the State of
15 Idaho that the watermaster is or is not bound?
16 MR. STANISH: Still calls for a legal
17 conclusion.
18 THE WITNESS: Well, we recognize that --
19 the State, in my experience, has been involved
20 over time with many old decrees. In some cases
21 the watermaster is mentioned, other cases not.
22 And these old decrees are -- can involve the
23 watermaster, but in many cases they're not
24 general, basinwide decrees. So that's one issue.
25 Another issue is that Mr. Eagle, I

1 think, was the watermaster before we initiated
2 this more formal association between the agency
3 that Ron Carlson and -- and the water district,
4 where the watermaster since 1977 has been a
5 Department employee.

6 As far as the watermaster having been
7 bound, this particular decree does include
8 Mr. Eagle. So I would anticipate that he was
9 bound.

10 Q. (BY MR. ARKOOSH): Is the State of
11 Idaho's position the State of Idaho is or is not
12 bound by this decree?

13 MR. STANISH: Calls for a legal conclusion.

14 THE WITNESS: In terms of being bound by
15 any of the existing decrees that were not general,
16 basinwide adjudications, my experience has been
17 that the State looks at these individual decrees
18 as part of the whole, and these decrees are
19 subject to review and not fully sufficient among
20 themselves. So in terms of your question about
21 being bound, I don't have an answer to that.

22 Q. (BY MR. ARKOOSH): Okay. Fair enough.
23 If you'd look at Exhibit E to Exhibit 2. And go
24 to page 28, if you would, please.

25 Are you familiar with the "Winter

1 Power Operation; Minidoka Powerplant" language?
2 Have you reviewed that?

3 A. Yes.

4 Q. Okay. In the first sentence it
5 indicates that this language is effective during
6 the "...operation of American Falls and Minidoka
7 Dams during the storage season"; is that correct?

8 A. Yes.

9 Q. Okay. And then it goes on -- and I'm
10 just going to paraphrase it, although that might
11 be a dangerous thing to do. But it goes on on the
12 next page and talks about the release of water
13 from American Falls for power production at these
14 power plants during the storage season of any year
15 whenever operation of these power plants, to the
16 full extent of their respective water rights for
17 power production, would result in loss of
18 irrigation water otherwise storable to the
19 reservoir system.

20 Do you see that?

21 A. Yes.

22 Q. Does the State of Idaho have a
23 position on what this language means?

24 MR. STANISH: Calls for a legal conclusion.

25 THE WITNESS: Yes.

1 Q. (BY MR. ARKOOSH): Could you tell me
2 generally what that is?

3 MR. STANISH: Calls for a legal conclusion.

4 THE WITNESS: Yes. My understanding of
5 this language is that this refers to the
6 production of power at the Minidoka Power Plant
7 during times -- during the winter when storage
8 could occur upstream. And it refers to that
9 tension between providing water for hydropower and
10 storing water.

11 Q. (BY MR. ARKOOSH): For irrigation
12 water?

13 A. For -- irrigation was mentioned here,
14 but we know that upstream storage has irrigation
15 and other uses as well.

16 Q. I know. But I want to limit the
17 answer to what this language talked about limiting
18 the power production for. It mentions irrigation
19 water is the only thing I see. If you see some
20 more in there, tell me.

21 A. No, this particular document says
22 "irrigation water."

23 Q. Okay. And then down further there's
24 an indented paragraph, and it talks about limit
25 releasing through the dams as follows. And it

1 talks about "...to meet existing diversion rights
2 in the reach of the river through Milner Dam and
3 power rights required to be recognized under the
4 provisions of the contract of June 15th, 2003,"
5 et cetera.

6 Do you see that language?

7 A. Yes.

8 Q. And so that, at least on the face of
9 this structure, indicates that even though water's
10 being held back for irrigation purposes, there
11 will be water released to meet other purposes,
12 even though it could have been stored for
13 irrigation purposes; is that right?

14 MR. STANISH: Objection. There's no
15 question there, and it calls for a legal
16 conclusion.

17 THE WITNESS: This whole section does
18 provide for the release of water for storage as
19 compared with storing -- releasing water for
20 power, as compared with storing it up above, yes.

21 Q. (BY MR. ARKOOSH): Right. And then it
22 says notwithstanding that, notwithstanding you
23 could store some water for irrigation purposes,
24 there's some things you have to release for, and
25 it talks about those in the indented paragraph;

1 at Minidoka was different from the absolute
2 subordination that we had described in the Boise
3 Basin. And that led to the amended -- the
4 supplemental director's report.

5 Q. (BY MR. ARKOOSH): Well, the
6 supplemental director's report, with the exception
7 of the last sentence where it wasn't subordinated
8 to junior upstream power rights, is an absolute
9 subordination; isn't that right?

10 A. That was the -- the before
11 recommendation. That's correct.

12 Q. Okay. There's a third recommendation
13 that we'll deal with here momentarily. Okay? Or
14 a third process.

15 But Exhibit E only applies to winter
16 storage; isn't that right?

17 A. Correct.

18 Q. And that's because in the summertime
19 the plant receives water because of water flowing
20 through for other purposes; isn't that correct?

21 A. That's correct.

22 Q. Okay. You named one reason that the
23 supplemental report, Exhibit 12, was adopted, and
24 that is because no water had ever been called
25 upstream; is that correct?

1 A. That was our understanding at the
2 time.

3 Q. Okay. In what circumstance operating
4 the system pursuant to the Eagle decree would
5 water have been called upstream to fill those
6 power rights?

7 MR. STANISH: Calls for speculation and
8 calls for a legal conclusion.

9 THE WITNESS: Well, in my understanding,
10 the actual operation of this power plant at
11 Minidoka is that to the extent that there's an
12 assessment that the storage water is going to fill
13 upstream, that water could be used to optimize
14 power, hydropower, even though the storage right
15 had not yet been filled.

16 Q. (BY MR. ARKOOSH): Okay. But my
17 question was, I'm trying to imagine a scenario
18 where the BOR or actually the beneficial owners of
19 that right, the people that got the benefit of the
20 power-loss payments, during the storage season
21 would call on water when they had, by the terms of
22 the deal and the terms of the Eagle decree, agreed
23 that their water would stay upstream? What's a
24 circumstance you think that they would have called
25 on water?

1 MR. STANISH: Calls for a legal conclusion,
2 calls for speculation, and assumes facts not in
3 the record.

4 THE WITNESS: Well, if we have a good -- if
5 the state has a good water year and the reservoirs
6 are not yet full and the flow in the river at
7 Minidoka is less than 2700 cubic feet per second,
8 my understanding now is that there have been
9 historic times when an assessment would be made
10 that -- that this 2700 cfs could be satisfied and
11 still provide for the full storage during the
12 irrigation -- during the storage season of the
13 upstream reservoirs.

14 So that weighing of the desire to
15 create hydropower, as compared with the desire to
16 create storage, has been historically -- it's my
17 understanding -- assessed, so there's been an
18 optimization of the power while still filling the
19 storage rights.

20 That's different from my understanding
21 of what's happened in the Boise Basin, where that,
22 to my understanding, has not occurred.

23 Q. (BY MR. ARKOOSH): Okay. So are you
24 trying to describe a circumstance when there would
25 be a call for water by the power rights at

1 Minidoka during the storage season?

2 A. It's not really properly stated a
3 call.

4 Q. Okay.

5 A. And I would go to Ron Carlson's
6 perspective here; it's an operational process that
7 doesn't require a call. It's a consideration and
8 an operational technique that doesn't require a
9 call.

10 Q. Then taking what you just said, David,
11 even if there was a circumstance where somebody
12 during the storage season tried to ignore the
13 whole deal where they agreed the water be held
14 upstream and called for water, it wouldn't be
15 necessary, would it, as long as there's a
16 watermaster to administer the water?

17 MR. STANISH: Calls for speculation.

18 THE WITNESS: What wouldn't be necessary?

19 Q. (BY MR. ARKOOSH): To make a call.
20 It's an operational function, is it not?

21 A. The operational function would not
22 require a call, is what you're saying?

23 Q. Yes.

24 A. I agree with that. In this situation
25 a call would not be required.

1 Q. Would you look at page 3. And the
2 very last sentence, it reads, "Generally, the goal
3 of the Department in the adjudication is to ensure
4 that the significant historical practices of a
5 basin are reflected either in the elements of
6 water rights or in a general provision for that
7 basin."

8 Do you see that? Page 3, last
9 sentence.

10 A. Yes, correct.

11 Q. Did you actually write that sentence?

12 A. This was written under my guidance.

13 Q. Okay. Is that still the policy of the
14 State of Idaho?

15 A. Yes.

16 Q. Okay. And from where does that policy
17 originate? Do you know?

18 A. It has been a policy that has been
19 reflected throughout the SRBA. I can give you
20 some examples.

21 Q. No. Well, go ahead and give me
22 examples.

23 A. One example is in the Big Lost River
24 Basin, where the historic practice there was to
25 have storage credits. That's the only place in

1 the world that I'm aware of where storage credits
2 have happened. And the agency made
3 recommendations in accordance with storage credits
4 because that was the historic practice.

5 Q. And that's because the water users
6 wanted that; isn't that right? Or do you recall?

7 A. I wasn't involved at that time. Later
8 on it was a real question of whether they wanted
9 it or not. But originally, that was -- that was
10 the recommendation that was made. And we've had
11 other examples as well.

12 Q. Are there any other historic
13 practices?

14 A. One is on the Boise River Basin. The
15 historic practice has been that for some of the
16 decreed rights, they start out at 100 percent, and
17 then they are reduced to 75 percent, and later to
18 60 percent. There was a court order that
19 initiated that. It's not -- it wasn't finally
20 decreed.

21 There was an order that was not
22 overturned. It wasn't actually finally decreed.
23 But we maintained that historic practice in our
24 recommendation.

25 Q. Any others?

1 A. Those are two examples.

2 Q. Okay. Any others of which you're
3 aware, as you sit here today?

4 A. I would have to think about it some.

5 Q. Okay. Fair enough. Page 5, please.

6 Do you see a paragraph on page 5 starting with the
7 words "Tony Olenichak"? I'm going to read that.

8 "Tony Olenichak is the Program Manager for Water
9 District No. 1 and oversees the day-to-day

10 operations of the water district. Mr. Olenichak

11 is also a Deputy Watermaster for Water District 1.

12 Mr. Olenichak has worked for Water District 1 for

13 over 17 years and is personally familiar with the

14 administration of water rights in Water

15 District 1. Historically, Water District 1 has

16 administered the power elements of the BOR's water

17 right Nos. 1-217, 1-218, 1-2064, 1-2068, 1-4024,

18 1-4025, and 1-4054 as subordinate to irrigation

19 and all other junior water users except

20 hydropower. Despite numerous opportunities to

21 make calls against junior users, Mr. Olenichak is

22 not aware of a single instance when the BOR has

23 made a call for water under these power rights

24 against junior water users."

25 Now, we just discussed that in a water

1 district it's an operational process where you

2 wouldn't normally make a call; isn't that correct?

3 A. Yes.

4 Q. And during the storage season these

5 particular power rights had, by contract, agreed

6 to leave their water upstream rather than call for

7 it; isn't that correct?

8 MR. STANISH: Calls for a legal conclusion.

9 THE WITNESS: Well, at the time this was

10 written, this was -- this did reflect our

11 understanding.

12 Q. (BY MR. ARKOOSH): Okay. But today we
13 know it's incorrect; isn't that right?

14 MR. STANISH: Calls for a legal conclusion.

15 THE WITNESS: Today we're aware of more

16 process that has occurred. I'm not sure that

17 Mr. Olenichak knew about it or was responsible for

18 it, but we understand that there has been a

19 determination to optimize the use of water in the

20 basin by satisfying, to the extent possible, the

21 water rights at Minidoka.

22 Q. (BY MR. ARKOOSH): The next sentence,

23 "Changing the operation of the water system to

24 allow these power water rights to be able to make

25 calls on junior water users would be a change in