U.S. Department of Justice

Environment and Natural Resources Division

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DEPARTMENT OF
WATER RESOURCES

December 4, 2009

via FedEx Mail

Diana R. Delaney, Chief Deputy Clerk
Snake River Basin Adjudication
DISTRICT COURT
253 Third Ave., North
Twin Falls, Idaho 83303-2707

Re: SRBA Case No. 39576
Subcase Nos. 01-02064, 01-10485, 01-10486, & 01-10487

Dear Ms. Delaney:

Enclosed are the originals and three (3) additional copies of following documents for filing:

1. **THE UNITED STATES' MOTION FOR SUMMARY JUDGMENT.**
2. **MEMORANDUM IN SUPPORT OF THE UNITED STATES' MOTION FOR SUMMARY JUDGMENT**
3. **AFFIDAVIT OF DAVID A. JARVIS**
4. **NOTICE OF SERVICE OF UNITED STATES' MOTION FOR SUMMARY JUDGMENT AND SUPPORTING DOCUMENTS**

Sincerely,

David A. Jarvis
Paralegal

Enclosures

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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: 01-02064, 01-10485
	)	01-10486, and 01-10487
Case No. 39576	)	
	)	NOTICE OF SERVICE OF UNITED
	)	STATES' MOTION FOR SUMMARY
	)	JUDGMENT AND SUPPORTING
	)	DOCUMENTS
	)	

COMES NOW the United States, by and its counsel of record and pursuant to I.R.C.P. Rule 5(f), and hereby gives notice that on the 4th day of December 2009, the United States served the following documents upon counsel for the other parties to the SRBA subcases listed in Attachment A:

1. The United States' Motion for Summary Judgment.

2. Memorandum in Support of the United States' Motion for Summary Judgment

3. Affidavit of David A. Jarvis.

DATED this 4th day of December, 2009.

David W. Gehlert

CERTIFICATE OF SERVICE

I certify that on December 4, 2009, I served true and correct copies of the foregoing NOTICE OF SERVICE OF THE UNITED STATES' MOTION FOR SUMMARY JUDGMENT AND SUPPORTING DOCUMENTS as follows:

via facsimile and FedEx mail:

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In Re SRBA	)	Subcase Nos.: 01-10485, 01-10486, 01-10487, 01-02064.
Case No. 39576	)	**THE UNITED STATES' MOTION FOR SUMMARY JUDGMENT**

Pursuant to Id. R. Civ. P. 56(c), the United States moves this Court for an Order of Summary Judgment disallowing Idaho Power Company's alternative claims 01-10485, 01-10486, and 01-10487 and for partial Summary Judgment instructing that the United States claim 01-02064 is not subject to trust obligations and that the quantity of water able to be released for hydropower purposes under the right is 44,275 acre-feet. This Motion will be supported by the MEMORANDUM IN SUPPORT OF THE UNITED STATES' MOTION FOR SUMMARY JUDGMENT being submitted under separate cover.

// // // // // // //

// // // // // // //

DATED this 4th day of December, 2009.

Respectfully submitted,

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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 In Re SRBA	)	Subcase Nos.: 01-10485, 01-10486, 01-10487, and 01-02064
Case No. 39576	)	
	)	**MEMORANDUM IN SUPPORT OF THE UNITED STATES' MOTION FOR SUMMARY JUDGMENT**

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I. INTRODUCTION.

Idaho Power Company claims, under three alternative theories, a water right to use, for hydropower generation, up to 300,000 acre-feet of water stored in the Bureau of Reclamation's American Falls Reservoir. Idaho Power's claims arise by virtue of a 1923 contract with Reclamation. That contract allowed Idaho Power the use of 45,000 acre-feet of storage space, which the Company continues to hold, and a "secondary" right to the use of 255,000 acre-feet of space, which Idaho Power relinquished decades ago.

Idaho Power's turn away from the secondary right began within a decade of its signing the 1923 contract. In 1932 the Company agreed to make use of the "secondary" storage right to generate power at its Twin Falls powerplant subordinate to all irrigation water rights. That same year, IDWR informed the Company that it had no claim to water independent of the United States' water rights. Not long thereafter, Idaho Power turned over operation of the "secondary" right to the United States.

By the time Congress addressed the reconstruction of American Falls reservoir in the early-1970s, Idaho Power had already relinquished its claim to an independent storage water right and had its permit cancelled by IDWR. Congressional hearings gave Idaho Power an opportunity to identify its interests at American Falls. The Company seized that opportunity and testified repeatedly. Not once did it claim a right to more than 45,000 acre-feet of storage space. Reconstruction of the reservoir also required new contracts. Again Idaho Power could have claimed a contractual right to the additional 255,000 acre-feet of water it now claims. Again it did not. Instead, in 1976 Idaho Power agreed to contracts which (1) omit that alleged right entirely; (2) describe Idaho Power's interest under the 1923 contract as 45,000 acre-feet of

storage; and (3) prevent Idaho Power from obtaining 300,000 acre-feet of storage space.

In light of this history only two conclusions can be drawn. One, Idaho Power's repeated representations that its contractual storage right is limited to 45,000 acre-feet leave it estopped from arguing otherwise in this Court. Two, Idaho Power's claim to a water right for 300,000 acre-feet is entirely without merit. Indeed, Idaho Power's claim turns a blind eye to both the governing law and its own actions.

Idaho Power wants this Court to reconsider a decision by the Director of IDWR, yet that decision gave the Company the very relief it had asked for – and did so almost forty years ago. Idaho Power asks this Court to grant it a right to 300,000 acre-feet of storage, yet the Company repeatedly informed Congress that it had only a right to 45,000 acre-feet of storage in American Falls Reservoir. Idaho Power claims an independent right to store water in American falls Reservoir, yet the United States already holds a license confirming its right to use the full capacity of the reservoir to store water. Idaho Power also suggests that this Court rule that the Director imposed trust obligations on the United States, yet the United States was not a party before IDWR and case law rejects the proposition that Reclamation contracts impose a trust.

For all these reasons, and more, the United States is entitled to summary judgment disallowing each of Idaho Power's three claims, as well as partial summary judgment ruling that the United States' water right 01-2064 is not subject to a trust obligation and that the quantity of water available for hydropower use under that right is exactly what Idaho Power contracted for: 45,000 acre-feet.[1/]

[1/] At the time of the 1923 Contract and the 1976 contracts, Idaho Power's contractual right was to 45,000 acre-feet of space. Today, Idaho Power's 2.6471 percent of the available capacity

II. FACTUAL BACKGROUND

A. Idaho Power Claims a Water Right by Virtue of a 1923 Contract With the United States.

Idaho Power advances three alternative theories to support its claim to a storage "water right in American Falls Reservoir by virtue of it's [sic] 1923 contract." Letter from James C. Tucker, Idaho Power, to Michael Holliday, IDWR (Dec. 21, 2005) ("Tucker Letter") (Attached as Exhibit A to Affidavit of David A. Jarvis "Jarvis Aff."). Each of those claims ask this Court to confirm a water right to store 300,000 acre-feet of water in the United States' American Falls Reservoir to be used for power generation from January 1 through December 31. *E.g.*, Notice of Claim, No. 01-10485, ¶ 6.

Idaho Power's first claim, assigned subcase number 01-10486, asks this Court to award the company a water right based upon a permit cancelled by the Idaho Department of Water Resources' ("IDWR"[2]) almost four decades ago. Tucker Letter at 1. The Company's second claim, 01-10485, assumes that the Court will decline to second guess the Department at this late date, and asserts that this Court should rule that the Director of IDWR somehow imposed a trust obligation on the Bureau of Reclamation's water right 01-2064 when he cancelled Idaho Power's permit. *Id.* Finally, claim 01-10487 in effect asks this Court to render the permit proceedings before the Director a nullity. The claim seeks a water right based on the

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equates to 44,275 acre-feet of space when the reservoir is filled. For the sake of simplicity the quantity is often rounded to 45,000 acre-feet, as will be done in this memorandum.

[2] IDWR was originally the Idaho Office of the State Engineer, then the Idaho Department of Reclamation, and then the Idaho Department of Water Administration before becoming IDWR. For simplicity, both IDWR and its predecessor agencies will be referred as IDWR in this memorandum.

Company's alleged beneficial use of water of the water initially claimed under its now-cancelled permit. *Id.*

B. The 1923 Contract Purports to Reserve Water Obtained Through a Permit From IDWR and Allows Idaho Power the Use of 45,000 Acre-feet of "Primary" Storage Space and 255,000 Acre-feet of "Secondary" Storage Space.

A severe drought in 1919 demonstrated that the existing reservoirs on the Upper Snake (Lake Walcott and Jackson Lake) could not ensure a reliable water supply for irrigation of the valley. REPORT OF THE REGIONAL DIRECTOR at 5, ¶ 13 (Oct. 1, 1946) (Attached as Ex. B to Jarvis Aff.); *see also* Contract No. Ilr-733 at ¶ 2, lines 18-21 (June 15, 1923) ("1923 Contract") (Attached as Ex. C to Jarvis Aff.). The Bureau of Reclamation determined that American Falls was the best location for another dam, but the site was not available because Idaho Power already had three small power facilities and a diversion dam at that location.[3] *See* 1923 Contract at ¶¶ 4-5. The 1923 Contract was the means by which the United States acquired Idaho Power's interests and paved the way for the construction of American Falls reservoir.

The 1923 Contract is an admittedly complicated document, but only a handful of its provisions are directly relevant to Idaho Power's storage claims. In essence, the contract gave

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[3] Idaho Power had also filed an Application with the Federal Power Commission ("FPC") to develop power farther downstream at Twin Falls. Discussion of those claims proceeded simultaneously with the negotiation of the 1923 Contract because construction of American Falls Reservoir would reduce the amount of water available at Twin Falls. *See generally* APPLICATION FOR LICENSE, Project No. 18 (Feb. 1, 1922) (Attached as Ex. D to Jarvis Aff.). In 1934, Idaho Power received a license from the FPC, discussed below, which clarified that the 255,000 acre-foot "secondary" storage right was subordinate to *all* irrigation water rights.

Idaho Power the ability to use two separate sources of stored water for power purposes.[4] The first was a "perpetual" right to the use of 45,000 acre-feet of space within the reservoir and water residing within that space. 1923 Contract at ¶ 16, lines 420-21. That contractual right has been expressly continued by a subsequent contract, the Spaceholder Contract, discussed below.

The remaining 255,000 acre-feet of water claimed by Idaho Power derives from provisions of the 1923 Contract creating a so-called "secondary" storage right. The United States will demonstrate below that Idaho Power long ago renounced its claim to that water. Nonetheless, even when the "secondary" right was extant, it was not as expansive as Idaho Power now claims.

Idaho Power's claims are rooted in Paragraph 19 of the 1923 Contract, which "reserved" 300,000 acre-feet of water "flowing into the reservoir after October 1st of any year . . . and actually storable therein." 1923 Contract, ¶ 19, lines 471-75. That "reservation" was to be used in conjunction with two storage rights, a "primary" right to 45,000 acre-feet of space, *id.* at ¶ 16, lines 420-23, and a "secondary" right to additional 255,000 acre-feet of storage capacity to be used "for the purpose of regulating and controlling the water reserved to the company under paragraph 19" and water which might later be acquired pursuant to Paragraph 10.[5] *Id.* at ¶ 18, lines 451-57.

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[4] The contract also allowed Idaho Power to use water "released or wasted" by the United States during certain periods. *See* 1923 Contract at ¶¶ 12, lines 344-49 & 24, lines 581-86. The current Falling Water Contract, discussed below, is to much the same effect.

[5] Paragraph 10 of the 1923 Contract recognized the possibility that Idaho Power might either acquire and import water from another basin, or acquire additional storage capacity above American Falls. To the United States' knowledge, the Company has not done either.

The contract made the "secondary" storage right subordinate to the storage of water for irrigation; water could be stored under the right "only when such capacity is not then required and not being used by the owners of irrigation rights to the use of such capacity." *Id.*, lines 457-59. In contrast to Idaho Power's claim before this Court to a year-round right, the 1923 Contract specified that the "secondary" storage right to store water did not begin until October 1 and ended once "the reservoir is first filled each season." *Id.*, lines 460-62. Even in the years in which the reservoir did not fill, the right was of limited duration. The 1923 Contract required the Company to release all claims to the water on April 1, except 60,000 acre-feet, and to release any claim to the water remaining thereafter on June 10th. *Id.*, lines 463-66. Within that period, the Company's ability to demand the release of water from the "secondary" right for use at its facilities below Milner Dam was further limited by two conditions. First, any water provided had to be able to be beneficially used by the Company. Second, the Company could get no more than the quantity of water necessary to produce specified flows at Shoshone Falls.[6]

The fact that the "secondary" right existed only during the storage season and terminated once the reservoir filled, suggest that the parties assumed there would be substantial quantities of water the United States could bypass as the reservoir was filing and still fill the reservoir.[7] Reclamation believed that American Falls Reservoir would fill every year and

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[6] As measured at Twin Falls, those flows ranged from 590 c.f.s during the period from Feb. 13 through April 15, to 790 c.f.s during the period December 1 through January 31. *Id.*, ¶ 21, lines 523-530; ¶ 22, lines 554-555.

[7] That understanding comports with the Reclamation Act, which authorizes the use of Reclamation facilities for the development of commercial power only where such use would not "impair the efficiency of the irrigation project." *Burley Irr. Dist. v. Ickes*, 116 F.2d 529, 530-31 & n.1 (D.C. Cir. 1940) (*quoting* the Act of April 16, 1906).

therefore "reserved" one-quarter of the reservoir's capacity for the development of new land. REPORT OF THE REGIONAL DIRECTOR, at 5, ¶ 13. The drought that hit Idaho in the 1930s demonstrated that Reclamation's assumptions on water availability were overly optimistic. That drought would lead to further restrictions on the use of the "secondary" storage right, but before that would happen, IDWR would reject Idaho Power's efforts to complete its proposed appropriation of storage water at American Falls.

C. IDWR Declines to Certificate Idaho Power's Permit.

Idaho Power's "reservation" of storage water in the 1923 Contract rested on permit R-269 it had received from IDWR in 1921. *See* 1923 Contract at ¶ 6, lines 41-44; *see also* APPLICATION (June 13, 1921) (Attached as Ex. E to Jarvis Aff.). That permit was submitted pursuant to an agreement with the United States as a means to facilitate completion of the 1923 Contract. Idaho Power had demanded water, as well as money, as compensation for its American Falls facilities. When Reclamation questioned whether the Secretary had authority to provide the Company with water, Idaho Power's solution was to have the company apply for a permit from the State and then "reserve" the water right initiated by the permit. District Counsel Letter of March 18, 1921 at ¶ 2 (Attached as Ex. F to Jarvis Aff.). Reclamation agreed to that proposal on the condition that the Company agree that any filing made by Idaho Power would be subject to the terms of the contract, if it were completed, and that the Company release its permit if no agreement could be reached on a contract. *Id.* at ¶ 3. The United States and Idaho Power then entered into a Memorandum of Agreement in which the United States agreed to delay filing the permit application it had prepared, and Idaho Power agreed its permit would be subject to the terms of the contact. *See* MEMORANDUM OF AGREEMENT (March 17, 1921) ("MOA") (Attached

as Ex. G to Jarvis Aff.). Thus Idaho Power filed for a permit in March of 1921 (Permit R-273) and less than two weeks later, the United States filed on the same storage water (Permit R-269).[8] *See* Memo. from Leo Bresnahan, Idaho Asst. Attorney General ("Bresnahan Memo.") (Attached as Ex. H to Jarvis Aff.) at 2-3 (Feb. 10, 1933).

The United States completed construction of American Falls Reservoir in 1927 and submitted a Proof of Completion of Works to IDWR on May 16, 1931. IDWR certificated the government's right to store 1,800,000 acre-feet of water in American Falls Reservoir on July 12, 1932. Bresnahan Memo. at 3.

A month after the United States submitted its Proof, Idaho Power submitted a Proof of Completion of Works which claimed the United States' reservoir as the Company's completed "works." IDWR informed Idaho Power that it intended to reject that filing because "all rights of the Idaho Power Company to store water in American Falls reservoir" were "set out, determined and concluded" in the 1923 Contract, and therefore a Certificate of Completion of Works for Idaho Power's permit "would be a nullity and would only serve to further complicate the situation."[9] Letter from Idaho Commissioner of Reclamation to Idaho Power Co., at 5 (Sept.

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[8] The 1923 Contract addressed the permits and allowed either party to apply "proof on the permit of the earliest priority." 1923 Contract at ¶ 37, lines 832-38; *see also* Bresnahan Memo. at 10 (opining that the contract allowed United States to submit proof under Idaho Power's permit).

[9] IDWR was not alone in that view. When American Falls Reservoir District ("AFRD") learned of Idaho Power's permit applications, it wrote IDWR expressing bewilderment over the applications "as the rights of Idaho Power Company in the American Falls Reservoir are all defined under contract between the Power Company and the United States Bureau of Reclamation." Letter from R.E. Shepherd, President AFRD, to Idaho Commissioner of Reclamation (May 7, 1931) (Attached as Ex. I to Jarvis Aff.).

29, 1932) (Attached as Ex. J to Jarvis Aff.).

Idaho Power responded by abandoning its claim for an independent water right. Instead, it asked to be awarded a Completion of Works with a qualification that "the right granted herein to store water is not in addition to the right to store water under [the United States' American Falls permit] *but is a part of it*." Letter from Commissioner of Reclamation to Idaho Power Co. at 1 (Dec. 31, 1932) (emphasis added) (Attached as Ex. K to Jarvis Aff.). IDWR rejected that proposal. In doing so, the Department explained that Idaho Power "must rely upon its contract with the United States. . . . for its right to store water in American Falls Reservoir." *Id.* at 2.

IDWR obtained a legal opinion from an Idaho Assistant Attorney General. That opinion noted that Idaho Power sought a certificate of completion of works "wholly upon the basis of its contract with the United States." It further explained that IDWR had "taken the position that the Idaho Power Company waived and abandoned all rights it might have acquired under its Permit . . . . by entering into the contract with the U.S." and therefore the Department could not issue a certificate to the Company. Bresnahan Memo. at 9, 5-6. The Idaho Assistant Attorney General concluded that IDWR had properly declined to allow Idaho Power's appropriation to be completed because Idaho Power could not rely on the United States' construction. *See id.* at 12.

IDWR apparently believed no further action was necessary because Idaho Power's permit would languish for more than thirty years before a new Director would return to the matter and cancel the permit. Those later proceedings would parallel the initial proceedings; Idaho Power would first claim an independent storage right and then abandon it by requesting

that IDWR declare that Idaho Power's rights under its permits had been "merged" into the United States' rights.

D. Idaho Power's 1934 Federal Power Commission License Limits the "Secondary" Storage Right.

While Idaho Power was seeking water rights from IDWR, it was also seeking a license for a power plant at Twin Falls from the Federal Power Commission ("FPC"). Idaho Power succeeded in obtaining a license from the FPC. In the process of doing so, the Company agreed to language making the "secondary" storage right subordinate to all irrigation rights. *See* Letter from James L. Boone, IPC Attorney to B.E. Stoutemyer, BOR Dist. Counsel (April 25, 1932) (Attached as Ex. L to Jarvis Aff.).

As a result, Idaho Power's power license expressly made all rights to the use of water for power purposes the company then held, or would later acquire, "subject [to], inferior, and subordinate to *all* rights heretofore or hereafter acquired by the United States *or other parties* for irrigation purposes." LICENSE, PROJECT 18 at 11, Art. 14 (May 11, 1934) (emphasis added) (Attached as Ex. M to Jarvis Aff.). The only two exceptions to that subordination were (1) the 45,000 acre-foot storage right the company had obtained through Paragraph 16 of the 1923 Contract; and (2) any "seepage, percolation, drainage, spring or springs, waste and/or other influent water" arriving in the channel of the Snake River between Milner Dam and Twin Falls.[10] *Id.* Thus by no later than 1934, Idaho Power had formally agreed that any ability it had to use

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[10] The license did include a caveat that it would not modify the company's rights under the 1923 Contract or affect its use of water at points other than the Twin Falls power plant. *Id.* Nonetheless, the license made efforts to meet the flow targets at Twin Falls set by the 1923 Contract entirely subordinate to the use of water for irrigation purposes.

water under the "secondary" storage right at its Twin Falls facility was subordinate to *any* irrigation water right.

E. A 1935 Contract Allows the United States to Operate the "Secondary" Storage Right.

As noted above, the drought that hit in the 1930s proved that the planners had vastly over estimated the amount of water that would be available for storage in American Falls Reservoir. The drought prompted Reclamation to make the water previously reserved for new development available to existing American Falls contractors through relatively short term leases. REPORT OF THE REGIONAL DIRECTOR (Jarvis Aff., Ex. B) at 5-6, ¶ 14. Reclamation also engaged Idaho Power in discussions to modify the 1923 Contract. By the time the parties agreed to a new contract in 1935, there had been "several years" with "a shortage of water available for filling [American Falls R]eservoir and for irrigation purposes from the Snake River." Contract No. Ilr-801 (Adopted May 9, 1935) ("1935 Contract") (Attached as Ex. N to Jarvis Aff.) at 2. The 1935 Contract was intended to address that shortage by limiting the release of water for hydropower so that additional water could be stored.[11] *Id.* at 3.

Through the 1935 Contract Idaho Power agreed to grant the United States administration of the "secondary" storage right, so long as the company received the flow rates at Shoshone Falls specified in the Paragraph 21 of the 1923 Contract from October 1 through

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[11] The effort to increase the quantity of water stored at American Falls over the winter ultimately addressed power generation at several locations. The essential agreement underlying the 1935 Contract was that in exchange for the United States agreement to forego construction of the power plant it had planned at American Falls, Idaho Power agreed to curtail generation at its American Falls power plant and provide power to the Minidoka Project from other facilities. *See id.* at 3-4.

March 15.[12] *Id.* at 4-5. Thus, the new contract had the effect of divesting Idaho Power of control over the "secondary" storage right and shortening its season of use by three months.

The 1935 Contract continued until 1950 when the Act re-authorizing Palisades Reservoir authorized construction of a federal powerplant at American Falls and effectively ended the need for the contract.[13] *See* Pub. L. 81-864, § 2(b), 64 Stat. 1083 (1950) ("1950 Act"); *see also* Hearings on H.R. 5506, 81st Congress (Attached as Ex. O to Jarvis Aff.) at 94 (report of the Secretary of Interior); *Id.* at 198 (Testimony of Ralph Gale, Idaho Power Company).

F. The United States Obtains a License Completing its Appropriation of Water for Storage in American Falls Reservoir.

As noted above, IDWR refused to issue Idaho Power a Proof of Completion of Works because the agency had already issued one to the United States for American Falls Reservoir. The United States followed up on its Proof of Completion of Works with its proof establishing beneficial use of the water in 1941. The following year, IWRD issued the United States a License and Certificate of Water Right confirming the United States' right to divert and store up to 1,800,000 acre-feet of water in the Reservoir.[14] LICENSE AND CERTIFICATE OF

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[12] Reclamation did agree to release the full 255,000 acre-feet to Idaho Power at least once every five years. *Id.* at 5.

[13] In addition to authorizing a federal powerplant that was inconsistent with the 1935 Contract, the 1950 Act also called for repayment contracts allowing for the use of capacity in either American Falls or Palisades Reservoirs to include water savings provisions. *Id.* at § 4(b). Although the federal powerplant was never built, subsequent repayment contracts did include winter water savings provisions that served the same purpose that the 1935 Contract had. The 1950 Act also finally allocated the water that had been "reserved" when American Falls Reservoir was first planned. All of the water went to irrigation uses. *See* 1950 Act at § 3.

[14] The license exceeds the capacity of the reservoir to allow water to be diverted for bank storage.

WATER RIGHT R-269/01-2064 (July 9, 1942) (Attached as Ex. P to Jarvis Aff.). Thus as of 1942, the United States had completed its appropriation of sufficient water to fill American Falls Reservoir to its capacity.

G. Idaho Power Abandons Its Claim to a Water Right.

Not long after Keith Higginson became Director of IDWR in 1967, he decided to formally close Idaho Power's permit file. That July he asked the Company to comment on his proposal to cancel the permits. MEMORANDUM DECISION, In the Matter of Permit Nos. 01-2041 and 01-2065 at 1 (April 21, 1971) ("MEM. DECISION" attached as Ex. Q to Jarvis Aff.). Idaho Power surprised the Department by requesting that it be granted a license. *See* Letter from H.R. Moore, Vice President, Idaho Power to State Dept. of Reclamation (Nov. 9, 1967) (Attached as Ex. R to Jarvis Aff.). The Department refused to do so. Instead, IDWR issued an Order to Show Cause why the permits should not be cancelled. MEM. DECISION at 1.

Idaho Power's response to that Order surprised the Department once again: this time by reversing course and asking that the Director enter an order finding that all of its water rights covered by Permit No. R-273 – the permit Idaho Power relies on to support its claim – were "merged into the rights granted to the Secretary of the Interior in Permit Nos. R-268 and 15134."[15] ANSWER TO ORDER TO SHOW CAUSE at 6 (Dec. 1, 1970) ("ANSWER TO SHOW CAUSE" attached as Ex. T to Jarvis Aff.). Director Higginson agreed to do so and therefore cancelled

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[15] The Company also requested the Director hold that the Company's rights under Permit 15201 had been merged into the United States' rights at American Falls. The Director did so in his 1971 Memorandum Decision. Permit 15201 addressed Idaho Power's request for a water right for "utilization of water from the reservoir." Letter from E.C. Kierstad, Idaho Power, to Commissioner of Reclamation (Oct. 8, 1932) (Attached as Ex. S to Jarvis Aff.).

Idaho Power's permits.[16] MEM. DECISION at 2; ORDER OF CANCELLATION (April 22, 1971) (Attached as Ex. U to Jarvis Aff.). Five years later, Idaho Power would enter into a series of contracts which, consistent with relief the Company obtained from the Director, did not include the "secondary" storage right the company now claims. Those contracts were brought about by the reconstruction of American Falls Reservoir.

H. Idaho Power Informs Congress That it Holds 45,000 Acre-feet of Storage in American Falls Reservoir.

In the mid-1960s Reclamation learned that a chemical reaction was eating into the dam's concrete. That led the agency to reduce the dam's storage capacity in 1968. In 1972 it cut the capacity again, to roughly two-thirds of what it had been initially. See S.Rep. No. 93-223 at 4 (1973) (Attached as Ex. V to Jarvis Aff.). The loss of storage space spurred efforts to have the dam replaced.

Idaho Power initially proposed that it be authorized to reconstruct the reservoir. Although Congress ultimately designated the American Falls Reservoir District as the constructing agency, it took testimony on Idaho Power's proposal. That testimony gave Idaho Power an opportunity to clarify its rights to water in the reservoir. The Company testified at length before both the Senate and the House, but never once mentioned the 255,000 acre-foot "secondary" storage right included in its claim before this Court.

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[16] Director Higginson also found "that by reason of contracts and agreements entered into between the Company and the United States and America, those rights are held in trust for use by the Company under the water rights of the United States at American Falls Reservoir." MEM. DECISION at 2. Mr. Higginson, however, did not explain how a state administrative official could impose a trust upon the United States, particularly in a proceeding to which the United States was not even a party.

Indeed, while the 300,000 acre-feet of water Idaho Power now claims would make it one of the largest spaceholders in American Falls Reservoir,[17] it informed Congress that "[t]he Company's interest as a spaceholder is very modest in contrast to the irrigator's interest" and went on to identify that interest as "45,000 acre-feet of storage capacity." *American Falls Dam, Upper Snake River Project, Idaho: Hearing Before the Subcommittee on Water and Power Resources of the Committee on Interior and Insular Affairs, United States Senate*, 93d Cong., 1st Sess., at 109, 111 (1973) (Statement of Robert A. Hogg, Idaho Power Co.) ("Senate Testimony," attached as Ex. X to Jarvis Aff.); *Replacement of the American Falls Dam in Idaho, Part 1, Hearing Before the Subcomittee on Water and Power Resources.... House of Representatives*, 93d Cong., 1st Sess., at 43 (1973) (Statement of Robert A. Hogg, Idaho Power Co.) ("House Testimony," attached as Ex. Y to Jarvis Aff.).

Congress authorized the reconstruction of American Falls Reservoir in 1973.[18] Pub. L. 93-206, 87 Stat. 904 (1973). However, another obstacle remained before construction could proceed. The authorization assumed that the project would be financed by tax-exempt bonds. H.R. Rep. No. 93-701 at 9 (1973) (Attached as Ex. AA to Jarvis Aff.). Existing

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[17] Of the roughly 35 Spaceholders, only two, American Falls Reservoir District and American Falls Reservoir District #2 have more than 300,000 acre-feet of storage capacity. In fact, only four have more than 100,000 acre-feet. *See* Exhibit 1 to the 1976 Falling Water Contract (the Falling Water Contract is discussed below and is attached as Ex. W to Jarvis Aff.)

[18] In doing so, Congress directed that reconstruction of American Falls reservoir "shall in no way alter or change the present proportionate storage rights of present spaceholders..." Pub. L. 93-206 at § 2(a). Not only did Idaho Power represent that its storage right was only 45,000 acre-feet, but at that time IDWR only accounted for 45,000 acre-feet of storage for Idaho Power – as is still the case today. Excerpt from Water Distribution and Hydrometric Work (1969); Excerpt from 2009 Water District 1 Storage Report (both attached as Ex. Z to Jarvis Aff.).

Reclamation law allowed the use of tax-exempt revenue bonds used to finance construction of Reclamation reservoirs, but the presence of hydro-electric power raised question whether that law would apply. H.R. Rep. No. 94-531 at 1 (1975) (Attached as Ex. BB to Jarvis Aff.). Resolution of that question required Congress to investigate the role hydropower generation had played in operation of the reservoir.

After having heard testimony from Idaho Power, irrigators, and Reclamation officials, committees from both the House and the Senate found that:

> There has been no intention to release water specifically for use by the Idaho Power Company to generate electricity, except for 45,000 acre-feet (2.65 percent of the storage capacity) whose release the power company can schedule for the purpose of generating electric energy.

H.R. Rep. No. 94-531 at 3; *accord* S. Rep. No. 94-570, at 3 (1975) (explaining that "Idaho Power has a limited spaceholder right (under 3%).....") (Attached as Ex. CC to Jarvis Aff.).

That conclusion allowed Congress to pave the way for American Falls Reservoir's reconstruction by authorizing the use of tax-exempt bonds to finance a Reclamation reservoir where the generation of electricity was a "subordinate use" to irrigation and "substantially all" water from the project would be contractually available for irrigation use. Pub. L. 94-164, § 7(e), 89 Stat. 970 (1975) (codified at 26 U.S.C. § 103). The legislative history – and later the contracts – spelled out exactly what those requirements mean: less than 10% of the reservoir's space can be contractually scheduled for use in generating energy.[19] H.R. Rep. No. 94-531 at 4.

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[19] Ten percent of American Falls Reservoir's capacity is roughly 170,000 acre-feet.

I. Idaho Power Enters Into New Contracts Which Do Not Provide the Secondary Storage Right.

The reconstruction of American Falls Reservoir required a series of contracts to arrange for construction of, and payment for, the new reservoir, and to address use of water from the reservoir. Three of the resulting contracts, all of which were effective March 31, 1976, directly bear on Idaho Power's ability to use water stored in American Falls Reservoir:

(1) A construction contract between the United States and the American Falls Reservoir District (known as the "Government Contract");[20/]

(2) A contract between the American Falls Reservoir District and Idaho Power Company, through which agreed to pay for the use of "falling water" from the reservoir to defray the cost of construction ("Falling Water Contract");

(3) Various replacement spaceholder contracts between existing reservoir spaceholders, the United States and the American Falls Reservoir District which assigned repayment and operation and maintenance responsibilities and also allocated storage space in the reservoir (Idaho Power's contract, Contract No. Ilr-733S, will be referred to as the "Spaceholder Contract") (Attached as Ex. DD to Jarvis Aff.).[21/]

1. The Spaceholder Contract Confirms Idaho Power's Contractual Right to 45,000 Acre-feet of Storage Space.

The Spaceholder Contract identifies Idaho Power's interest as a spaceholder – *i.e.*, its right to delivery of water from American Falls Reservoir. *See* Pub. L. 93-206 at § 3. The contract begins with a series of recitals which identify Idaho Power's interests under the 1923

[20/] The Government Contract is not discussed in detail in this Memorandum because its pertinent provisions were incorporated into the Falling Water Contract.

[21/] Spaceholder contracts are also called "repayment contracts" because they are the means by which the entities holding rights to stored water pay for the construction and operation and maintenance of a reservoir. *See* Pub. Law 93-206 at § 3; *see also* Spaceholder Contract at ¶¶ 22-24, 28.

Contract. The "secondary" storage right is not mentioned. Instead, Idaho Power's rights under the 1923 contract are described as 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."[22/] Spaceholder Contract at 1, ¶ 5.

In the Spaceholder contract, the United States promised to "continue to make available to the Spaceholder [Idaho Power] stored water accruing to 2.6471% of the active capacity [45,000 acre-feet of the 1,700,000 capacity] of the Replacement Dam." *Id.* at 10, ¶ 21 (b). The contract recognized that the new reservoir would be operated so that "the primary irrigation purpose and the incidental purposes of the Minidoka Project shall not be impaired by the subordinate utilization for power generation...." *Id.* at 14, ¶ 28(e).

Although the Spaceholder Contract states that it is a "supplement" to the 1923 Contract, the contract directs that the terms of the Spaceholder Contract "shall prevail" over the terms of the 1923 contract "to whatever extent" the provisions of the two contracts are in conflict. *Id.* at 6, ¶ 19(a). The Spaceholder Contract also acknowledged that due to events since 1923, "certain provisions of the [1923] Contract may no longer be applicable." *Id.* Finally, the contract includes Idaho Power's agreement that "the water storage rights evidenced by permits, licenses and court decrees for [American Falls Reservoir] are held in the name of the United States." *Id.* at 23, ¶ 49.

[22/] As was explained above, the 1923 Contract included provisions which allowed Idaho Power to use water wasted or released for other purposes to generate hydropower. *See* 1923 Contract at ¶¶ 12, lines 344-49 & 24, lines 581-86.

2. The Falling Water Contract Allows Idaho Power to Generate Hydropower With Water Released for Other Purposes.

The Falling Water Contract allows Idaho Power to generate hydropower from "falling water," water that is released from the dam "for irrigation and other purposes incidental thereto." Falling Water Contract at 6. The contract expressly makes use of falling water for power purposes "subordinate to the furnishing of water for irrigation purposes." *Id.* at 10, § 2.1(d). It further specifies that less than 10% of the water stored in the reservoir (170,000 acre-feet at full capacity) may be contractually scheduled for release by Idaho Power.[23] *Id.* at § 2.1(e).

Through the Falling Water Contract, Idaho Power agreed to the terms of Article 16 of the Government Contract, which require that new reservoir be operated so that "the primary irrigation purpose and the incidental purposes of the Minidoka Project shall not be impaired by the subordinate utilization for power generation...." *Id.* at 19, § 4.6(A). To reiterate that point, the contract explains that Reclamation is not obligated to operate the reservoir to have water at elevations for power generation or to increase head for power generation purposes. *Id.*

Finally, the Falling Water Contract included, as Exhibit 1, a list of all of the storage rights, the volume of those rights and the contract providing them. That list identifies Idaho Power as holding 45,000 acre-feet of storage under the 1923 Contract. Thus, both the Spaceholder and Falling Water Contracts specifically identified Idaho Power's storage rights under the 1923 contract. Neither mentions a right to 255,000 acre-feet of "secondary" storage.

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[23] The contract recognizes that Idaho Power can acquire water from non-participating Spaceholders but limits its ability to do so. So long as the bonds and notes that funded the reconstruction are unpaid, Idaho Power may acquire no more than a total of 8% of the reservoir's capacity, including the 2.6471% of the active capacity "presently owned by Idaho Power." *Id.* at § 2.3 (I).

J. Idaho Power Asks for Water Under the Secondary Storage Provisions of the 1923 Contract.

Two years after Idaho Power agreed to contracts which omitted any reference to the 255,000 secondary right provided in the 1923 contract, IDWR implemented a new computerized accounting system to track the allocation of the water stored in American Falls Reservoir. That system identifies Idaho Power's storage right as 45,000 acre-feet. *See e.g.*, Excerpt from Water Distribution and Hydrometric Work (1978) (Attached as Ex. EE to Jarvis Aff.); Excerpt from 2009 Water District 1 Storage Report (Jarvis Aff., Ex. Z). To the United States' knowledge, Idaho Power has never taken issue with the accounting system.

Indeed, decades passed with no indication from Idaho Power that it believed its storage right was anything other than the 45,000 acre-feet identified in the Spaceholder Contract. Thus, Reclamation was surprised when it received a letter from Idaho Power in 2001 which claimed a right to water under the "secondary" storage provisions of the 1923 Contract.[24] Letter from James C. Tucker to J. William McDonald at 2-3 (October 18, 2001) (Attached as Ex. FF to Jarvis Aff.). Caught off guard by Idaho Power's request, Reclamation responded that it would look into the matter. Letter from Regional Director to Idaho Power (Dec. 31, 2001) (Attached as Ex. GG to Jarvis Aff.). In the end, however, the agency did not provide Idaho Power with the water it sought. Idaho Power did not again claim water pursuant to the 1923 Contract until the claims at issue here were filed in late 2005.[25]

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[24] Idaho Power's letter addressed only the 1923 Contract and did not even acknowledge that the Company had subsequently agreed to new contracts.

[25] In addition to filing claims in the SRBA based on the 1923 Contract, Idaho Power has brought breach of contract claims against the United States in the Court of Federal Claims.

III. ARGUMENT

The United States' position is simple: Idaho Power's right to use water stored in American Falls reservoir is exactly what it contracted for in 1976 – the contractual right to use up to 45,000 acre-feet of space, and the right to generate hydropower through the use of "falling water," water that is released from the dam for any purpose other than generating hydropower. Below we demonstrate that there is no basis for this Court to award Idaho Power a water right under any of its theories. First, however we demonstrate that the Company's actions leave it estopped from even asserting its claims.

A. Idaho Power Must be Estopped From Asserting Claims Which Are Inconsistent With its Representations to IDWR, Congress and the United States.

Idaho courts have repeatedly recognized that the doctrine of quasi-estoppel prevents a party from being able to gain an unconscionable advantage, or impose an unconscionable disadvantage upon another, by changing positions. *E.g., Garner v. Bartschi*, 139 Idaho 430, 437, 80 P.3d 1031, 1038 (2003). Quasi-estoppel applies where:

> (1) a party is asserting a right inconsistent with a position previously taken;
>
> (2) the party having changed positions has gained an advantage or produced a disadvantage in another; and
>
> (3) it would be unconscionable to allow a party to maintain a position inconsistent with one in which he acquiesced or of which he accepted a benefit.[26]

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[26] Quasi-estoppel is not limited to judicial proceedings. Rather it is a broad term which encompasses a number of narrower subsets such as judicial estoppel. *See* 28 Am. Jur. 2d Estoppel and Waiver § 74. The doctrine is closely related to equitable estoppel; however, it does not require misrepresentation by one party or actual reliance by the other. *Garner*, 139 Idaho at 437, 80 P.3d at 1038.

Id. (*citing Eastern Idaho Agricultural Credit Ass'n v. Neibaur*, 133 Idaho 402, 410, 987 P.2d 314, 322 (1999)). Each of those elements is present here.

1. Idaho Power's prior positions before IDWR and Congress, and in contracts with the United States, contradict its claims.

a. Idaho Power asked IDWR to rule that it does not have a water right for storage in American Falls Reservoir.

Before this Court, Idaho Power claims a right to 300,000 acre-feet of storage in American Falls Reservoir on the theory that it reserved that quantity of water in the 1923 Contract. As was recounted above, Idaho Power's "reservation" of storage water rested on Permit No. R-273, which Idaho Power had submitted to IDWR as part of an agreement with the United States intended to facilitate the contract.

In 1932 IDWR informed Idaho Power that it would not allow the Company's permit to ripen into a water right. The matter then lay dormant for more than thirty years before a series of Orders from IDWR resulted in Idaho Power requesting that the Director enter an order finding that all of its water rights covered by Permit No. R-273 "merged into the rights granted to the Secretary of the Interior in Permit Nos. R-268 and 15134," the United States' permits for American Falls. ANSWER TO SHOW CAUSE at 6. The Director did so and therefore cancelled Idaho Power's Permit. MEM. DECISION at 2.

The Director's cancellation of the permit was consistent with the principle that merger operates to extinguish any ability to exercise the merged right. *See Allison v. John M. Biggs, Inc.*, 121 Idaho 567, 568, 826 P.2d 916, 917 (1992). Moreover, merger extinguishes all claims arising from the transaction which gave rise to the right. *See Williams v. Christiansen*, 109 Idaho 393, 397, 707 P.2d 504, 508 (Idaho App. 1985) (*quoting* RESTATEMENT (SECOND) OF

JUDGMENTS (1982)). In short, by requesting that its alleged right be merged into the United States' permit, Idaho Power unquestionably gave up its claim to a water right.

b. ***Idaho Power repeatedly informed Congress it had a contractual right to 45,000 acre-feet of water and never mentioned a claim to additional water.***

The structural problems with American Falls reservoir which emerged in the late 1960s and intensified in the early 1970s left all the American Falls spaceholders with a smaller water supply than they had contracted for. That prompted the water users, including Idaho Power, to seek Congressional approval for the reconstruction of the reservoir. Ultimately Idaho Power got what it wanted from Congress – reconstruction of the reservoir, plus the ability to use falling water to generate power and to acquire additional water. It did so, however, only after making repeated representations to Congress that are entirely at odds with its claims before this Court.

While Congress was debating how to reconstruct the reservoir, Idaho Power informed both chambers that "[t]he Company's interest as a spaceholder is very modest in contrast to the irrigator's interest" and specifically identified the Company's interest as "45,000 acre-feet of storage capacity." House Testimony at 109, 111; Senate Testimony at 43. Not once in its Statement or in testimony did the Company ever assert it had a right to 300,000 acre-feet of storage. Relying on Idaho Power's representations, Congress instructed that reconstruction of the reservoir would not change the contractual allocations. Pub. L. 93-206 at § 2(a).

When questions emerged over whether the presence of hydropower would preclude the use of tax-exempt bonds to fund the reconstruction of the reservoir, Idaho Power again failed to assert the 300,000 acre-foot right it now claims. Having heard testimony from

Idaho Power, irrigators, and Reclamation officials, committees from both the House and the Senate found that only 45,000 acre-feet of the reservoir's storage space had been used to release water specifically for use by the Company to generate electricity. H.R. Rep. No. 94-531 at 3; *accord* S. Rep. No. 94-570, at 3 (explaining that "Idaho Power has a limited spaceholder right (under 3%)....").

In light of Idaho Power's testimony and its own conclusions regarding the role of hydropower at American Falls, Congress acted to allow tax-exempt bonds to be used to finance the reconstruction of the reservoir because generation of electricity was a "subordinate use" to irrigation and "substantially all" water from the project would be contractually available for irrigation use. Pub. L. 94-164, 89 Stat. 970 (1975), Sec. 7(c) (*codified* at 26 U.S.C. § 103). The legislative history spelled out exactly what those requirements mean: less than 10% of American Falls' space can be scheduled for use in generating energy. H. Rep. 94-531 at 3.

Idaho Power now asserts claims that would have this Court redefine the contractual allocations and grant Idaho Power almost twice as much water for hydropower use as the maximum contemplated by Congress.

c. ***Idaho Power agreed through contract with the United States that its only right under the 1923 Contract was to store 45,000 acre-feet of water and that the United States holds the storage water rights for American Falls Reservoir.***

Idaho Power's claims before this Court stand in stark contrast to both the rights it agreed to in the 1976 Contracts and its description of its rights under the 1923 Contract in those contracts. Any prudent organization that believed it had a right to store 255,000 acre-feet of water would have specifically provided for that right in its Spaceholder contract. Yet Idaho

Power's contract does not. Instead, the contract specifies that the Company has a right to 2.6471% of the reservoir capacity, which is equivalent to approximately 45,000 acre-feet of space in the reservoir. Spaceholder Contract at 10, ¶ 21(b).

Not only does the Spaceholder Contract fail to provide for the water Idaho Power now claims, the contract describes Idaho Power's rights under the 1923 contract as 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."[22] Spaceholder Contract at 1, ¶ 5. The Falling Water Contract addresses the subject even more directly. Exhibit 1 to that contract lists Idaho Power's storage right as simply 45,000 acre-feet. Falling Water Contract, Exhibit 1.

Idaho Power further agreed that the new reservoir would be operated so that "the primary irrigation purpose and the incidental purposes of the Minidoka Project shall not be impaired by the subordinate utilization for power generation...." Spaceholder Contract at 14, ¶ 28(e). The Falling Water Contract gave teeth to that proposition by instructing that the use of water for hydropower purposes "shall continue to be subordinate to the furnishing of water from the Replacement Dam for irrigation purposes in that less than 10 percent of the water accruing to the active storage capacity in the Replacement Dam may be contractually scheduled for release by the Idaho Power Company. . ." Falling Water Contract at § 2.1(e) (*quoting* Article 18(a) of the Government Contract). Idaho Power's claim for 300,000 acre-feet of storage would have this

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[22] As was noted above, the 1923 Contract included provisions which allowed Idaho Power to use water wasted or released for other purposes to generate hydropower. The Falling Water Contract now expressly delineates Idaho Power's ability to generate hydropower with water released from the reservoir for other purposes.

Court impair irrigation by changing 255,000 acre-feet of storage from irrigation use to hydropower use, and make a mockery of the limit on the total use of water for hydropower that Idaho Power agreed to.

Finally, Idaho Power's claim to an independent water right is inconsistent with Idaho Power's acknowledgment in the Spaceholder Contract "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 that those rights would continue to be the storage rights for the reconstructed reservoir. Spaceholder Contract at 23, ¶ 49. Put simply, the Company's current position is irreconcilable with a raft of contract provisions it agreed to.

2. Idaho Power has benefitted from its representations to IDWR, Congress and the United States.

Each of the representations described above brought Idaho Power benefit. IDWR gave Idaho Power exactly the relief it requested. Idaho Power's repeated representations to Congress that it had no more than 45,000 acre-feet of storage allowed Congress to authorize a new reservoir which provided a more reliable supply for the 45,000 acre-feet of storage Idaho Power contracted for; enabled the Company to contract for the use of water released for other purposes; and lowered Idaho Power's repayment obligations by allowing the use of tax-free bonds to fund the new reservoir. Those representations and the terms it agreed to in its contracts also allowed Idaho Power to reap the benefits of the contracts while avoiding a fight with the irrigators whose storage rights would have had to be reduced in order to provide 255,000 acre-feet of water to Idaho Power. *See* Resolution of the American Falls Spaceholder Executive Committee (Jan. 6, 1973) (endorsing reconstruction of American Falls Dam with private

financing "provided that the present proportionate capacity rights of all spaceholders shall be maintained and that irrigation rights shall always have priority in the operation thereof.") (Attached as Ex. HH to Jarvis Aff.).

3. It would be unconscionable to award Idaho Power a water right that would flaunt Congressional instruction and deprive other spaceholders of water.

Idaho Power's change in position rises to the level of unconscionable for several reasons. First, Idaho Power's arguments in this Court simply cannot be reconciled with its relinquishment of its claim to an independent water right almost forty years ago. Thus Idaho Power is unconscionably subjecting the United States and the other parties to these subcases to the expense of unnecessary litigation. *Keesee v. Fetzek*, 111 Idaho 360, 362, 723 P.2d 904, 906 (1986).

Second, after Idaho Power repeatedly informed Congress that it held only a contractual right to store 45,000 acre-feet of water, Congress instructed that the use of water for hydropower is not to impair the irrigation purposes of the reservoir and allowed the use of tax free bonds because Idaho Power's testimony demonstrated that "virtually all" of the water in American Falls would be available for irrigation. Now Idaho Power would have this Court impair irrigation by re-allocating water to hydropower use and effectively fleece the taxpayers of the taxes that would have been collected on the reconstruction bonds had Idaho Power informed Congress it claimed 300,000 acre-feet of storage.

Third, Idaho Power's claims in this Court are plainly inconsistent with the terms of the Contracts it agreed to in 1976. Setting aside the fact that the 1976 Contracts fail to provide for the 255,000 acre-feet of storage Idaho Power now claims, those contracts directly contradict

Idaho Power's claim. In this Court, Idaho Power claims a right to store 300,000 acre-feet of storage; by contract it agreed it would never hold more than ten percent of the storage space (roughly 170,000 acre-feet). In this Court, Idaho Power claims it holds actual water rights: by contract it agreed that the storage water rights are held by the United States. In this Court, Idaho Power advances claims that would require this Court to re-allocate water from irrigation to hydropower; by contract the Company agreed that its generation of hydropower would not impair the project's irrigation purpose.

Fourth, Idaho Power has long acquiesced to an accounting system that at least since 1978 has not provide for the 255,000 acre-feet of storage it now claims. The Idaho Court of Appeals found a change in position unconscionable after only six years of acquiescence; Idaho Power has acquiesced to IDWR's accounting for decades. *Williams Lake Lands, Inc. v. LeMoyne Development, Inc.*, 108 Idaho 826, 829-30, 702 P.2d 864, 867-68 (Idaho App. 1985).

Fifth, and most unconscionable of all, if Idaho Power prevails on its claim *all* the other spaceholders would suffer. With Idaho Power's contractual right at 45,000 acre-feet, all the available water in American Falls is spoken for. *See* Exhibit 1 to the Falling Water Contract (Ex. W, Jarvis Aff.). Should this Court award Idaho Power the 300,000 acre-feet it now claims, the 255,000 acre-feet of "new" water Idaho Power would be entitled to would have to come out of the irrigation storage accounts of other Spaceholders.

B. Even if Idaho Power Were Not Estopped From Asserting its Claim, the United States Would be Entitled to Summary Judgment Because Idaho Power's Claims Have No Merit.

1. Idaho Power's beneficial use claim (01-10487) must be rejected because it is an improper collateral attack on the United States' license and seeks to relitigate the claim IDWR rejected.

Idaho Power's claim 01-10487 seeks a water right based on its alleged beneficial use of water of the water initially claimed under its now-cancelled permit. Idaho Power's claim cannot succeed for two reasons. First, the claim is an improper collateral attack on the United States' license. Second, having litigated its permit application to a conclusion, Idaho Power cannot now try to revive that claim by recasting it as a beneficial use claim.

a. ***Claim 01-10487 is an improper collateral attack on the United States' license.***

Idaho Power's beneficial use claim is an improper collateral attack on the United States' license which confirmed its right to store 1,800,000 acre-feet of water – the entire capacity of the reservoir plus bank storage – in American Falls Reservoir. *See* LICENSE 01-2064 (Ex. P. Jarvis Aff.). Idaho Power's claims asking this Court to award the Company a water right for 300,000 acre-feet of storage constitute a collateral attack on that license because it would require this Court to reallocate 300,000 acre-feet of the storage water right from the United States to Idaho Power.

It is well established that the law of the case in the SRBA precludes water right licenses from being collaterally attacked in the SRBA. *See e.g.*, MEMORANDUM DECISION AND ORDER..., subcase No. 29-11609 at 12 (Oct. 6, 2006). Collateral attacks on a license are barred because the exclusive remedy for challenging a permit is to "contest the permit application in the

proper administrative proceeding and if necessary through judicial review pursuant to the Administrative Procedures Act." *Id* at 12-13.

The rule against collateral attacks on water right licenses "extends beyond the parties to the administrative proceeding and their privies." *Id.* at 13. Because "[p]ublication notice is given . . . any affected person can initiate a contested case." *Id.* Thus, any entity which had an opportunity to contest a license is barred from collaterally attacking that license in the SRBA. *Id.*

In addition to notice by publication,[28] Idaho Power had direct knowledge of the United States's application to IDWR for a license to store water in American Falls Reservoir. Now, sixty years after the United States' water right was licensed, Idaho Power seeks a second opportunity to challenge the United States' right through a beneficial use claim which, if granted, would deprive the United States of 300,000 acre-feet of the water licensed to it. The time for bringing that challenge lapsed decades ago. Consequently, Idaho Power is now barred from doing so.

b. ***Idaho Power cannot relitigate a claim it failed to establish through a permit application.***

As was explained above, Idaho Power first claimed a right to store 300,000 acre-feet of water in American Falls Reservoir through the permit application it submitted to IDWR. IDWR cancelled that permit after Idaho Power gave up its pursuit of an independent water right. The Company now brings the very same claim before this Court in the guise of a beneficial use claim. Having pursued the same right in an administrative proceeding, it cannot now do so in the

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[28] *See e.g.*, Notices of Publication (March 17, 1941) (Attached as Ex. II to Jarvis Aff.).

SRBA. As Judge Melanson has explained, "[t]he bottom-line is that a party cannot have its water use adjudicated or administratively determined in one proceeding and then re-adjudicate the right under a more favorable legal theory in a subsequent proceeding." MEMORANDUM DECISION AND ORDER . . ., subcase 29-11609 at 12 (Oct. 6, 2006).

2. Idaho Power's claim premised on its permit application (01-10485) must be rejected because Idaho Power cannot challenge the Director's decision to cancel the permit.

a. The claim is an improper collateral attack on the United States' license.

Like claim 01-10486, Idaho Power's claim 01-10485 seeks an independent water right to store 300,000 acre-feet of water in American Falls Reservoir. Thus it constitutes an improper collateral attack on the United States' license for all the same reasons that claim 01-10486 does. Even if that were not the case, however, Idaho Power's argument that this Court should reverse the Director's decision to cancel its permit would have to fail for three additional reasons. First, it comes almost *forty* years after the fact. Second, and perhaps more incredibly, Idaho Power asks this Court to reverse a decision in which the Director gave Idaho Power the very relief it requested. Third, Idaho Power is bound by the Director's decision and cannot be heard to challenge it.

b. Idaho Power cannot challenge the Director's decision forty years after the fact.

Under the provisions of Idaho's former Administrative Procedure Act applicable at the time of the Director's Order cancelling Idaho Power's permit, Idaho Power had thirty days

to appeal the Order.[29] *See Bone v. City of Lewiston*, 107 Idaho 844, 846 n.2, 693 P.2d 1046, 1048 n.2 (1984) (quoting I.C. § 67-5215(b)(repealed 1992)). That requirement is jurisdictional and this Court is without authority to cure a jurisdictional defect caused by a failure to timely file an appeal. *E.g., Grand Canyon Dories, Inc. v. Idaho State Tax Com'n*, 121 Idaho 515, 516, 826 P.2d 476, 477 (1992) (*citing Chapman v. Boehm*, 27 Idaho 150, 152, 147 P. 289, 289 (1915)).

c. ***Idaho Power cannot challenge a decision that gave it the very relief it requested.***

Idaho Power formally requested that the Director find that its claimed permit right had been merged into the United States' storage right. The Director did so and therefore cancelled Idaho Power's permit. Idaho Power cannot be heard to challenge a decision that gave it the very relief it requested. *See Masters v. State*, 105 Idaho 197, 668 P.2d 73 (1983) (*citing e.g. Frasier v. Carter*, 92 Idaho 79, 437 P.2d 32 (1968)) (a party cannot be heard in an appeal seeking to overturn a favorable decision).

d. ***Idaho Power is bound by the Director's decision.***

Idaho Power was a party to the proceedings that resulted in the Director cancelling its permit and cannot now re-litigate the issue. As Judge Melanson has explained, it has long been the law in the SRBA that both prior decrees and prior administrative proceedings are binding on the parties to those proceedings. MEMORANDUM DECISION AND ORDER . . ., subcase 29-11609 at 12 (Oct. 6, 2006). They are binding because a party aggrieved by an administrative decision has the opportunity to obtain judicial review of that decision. *See id* at 12-13. Not

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[29] In 1992 the Idaho Administrative Procedures Act, I.C. § 67-5215 (b) through (g), was repealed and recodified. *See St. Joseph Regional Medical Center v. Nez Perce County Commissioners*, 134 Idaho 486, 488, 5 P.3d 466, 468 (2000).

surprisingly – given that the Director gave Idaho Power the very relief it requested – Idaho Power did not seek judicial review of the Director's order cancelling its permit. Regardless, Idaho Power fully participating in the proceedings before the Director and is bound by them. *E.g.*, *Hansen v. Estate of Harvey*, 119 Idaho 333, 336, 806 P.2d 426, 429 (1991).

In short, there is simply no basis for this Court to destroy the finality of a decision the Director rendered almost forty years ago and therefore the United States is entitled to summary judgment on Idaho Power's claim 01-10485.

3. Idaho Power's claim 01-10486 must be rejected because there is no basis to impose a trust obligation on the United States' water right 01-2064.

Idaho Power's claim 01-10485 asks this Court to rule that Director of IDWR somehow imposed a trust obligation on the Bureau of Reclamation's water right 01-2064 when he cancelled Idaho Power's permit. Assuming *arguendo* that Idaho Power's argument falls within the narrow exception to the rule against collateral attacks on licenses carved out by Judge Melanson in the MEMORANDUM DECISION AND ORDER..... Consolidated Subcase 91-63 at 29-30 (Sept. 2, 2004), this Court cannot grant Idaho Power's request to impose a trust obligation on the United States for three reasons.[30] First, the Director did not have jurisdiction to impose a trust obligation on the United States; nor does this Court. Second, courts with jurisdiction have repeatedly refused to find that Reclamation contracts create trust obligations. Third, general

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[30] In subcase 91-63 Judge Melanson allowed a collateral attack on the United States' license only to the extent the court was "being asked to clarify existing law against which the water right holders were entitled to rely." *Id.* at 30. Here, as will be explained below, there is no body of law that even arguably imposes a trust obligation on the United States's water rights for Reclamation projects.

principles of federal trust law preclude a finding that the United States has a trust obligation to Idaho Power.

a. *IDWR lacked jurisdiction to impose a trust on the United States.*

IDWR Director Higginson's Memorandum Decision cancelling Idaho Power's permit also found "that by reason of contracts and agreements entered into between the Company and the United States and America, those rights are held in trust for use by the Company under the water rights of the United States at American Falls Reservoir." MEM. DECISION at 2. The Director, however lacked jurisdiction to construe the United States' contractual obligations for two fundamental reasons.

First, the United States was not a party to the proceedings before the Director. Second, as this Court is no doubt well aware, the United States is immune from suit unless it has expressly consented to be sued. *E.g., United States v. Sherwood*, 312 U.S. 584, 586 (1941). There is no waiver of sovereign immunity encompassing Idaho Power's proceedings before the Director. Consequently, the Director's Order cannot have imposed a trust obligation on the United States.

b. *Courts have repeatedly concluded that Reclamation contracts do not create trust obligations.*

The question of whether a Reclamation contract creates a trust obligation has been squarely addressed – and squarely rejected – by several courts. In *Del Puerto Water Dist. v. U.S. Bureau of Reclamation*, 271 F. Supp. 2d 1224 (E.D. Cal. 2003) the court faced the same allegation that is before this Court – that a long ago State administrative proceeding had recognized the United States had trust obligations toward its Reclamation contractors. The Court

not only rejected that claim, it found the claim "disingenuous" given that the Ninth Circuit had rejected a trust theory in *Israel v. Morton*, 549 F.2d 128, 132 (9th Cir. 1977) and the California administrative agency had itself rejected the theory in a later decision. *Id.* at 1249. The Tenth Circuit has also rejected a claim that reclamation law creates a trust obligation. *See Elephant Butte Irr. Dist. v. U.S. Dept. of Interior*, 269 F.3d 1158, 1166 (10th Cir. 2001). In short, no court has ever held that a Reclamation contract creates a federal trust obligation.[31] Moreover, there is a good reason why: general principles of federal trust law preclude that result.

c. ***There is no express statement of intent by the United States to assume a trust obligation.***

Outside of the context of the government's dealings with Indian tribes, fiduciary obligations on the part of the United States are not implied. Instead, there must be an express statement of intent to assume a fiduciary obligation. *E.g., Hohri v. United States*, 782 F.2d 227, 244 n.39 (D.C. Cir. 1986), *vacated on other grounds*, 482 U.S. 64 (1987). A contract to perform specific services, such as a Reclamation contract does not constitute the necessary statement of intent. *Id.* at 244. That is particularly the case here, where the 1923 Contract does not even purport to impose a "trust."

In sum, there is no basis by which this Court can find the United States holds a water right in trust for Idaho Power. Thus, not only must Idaho Power's claim 01-10485 be rejected, but the United States is entitled to partial summary judgment directing that its water

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[31] Indeed, Judge Melanson has clarified that while I.C. § 43-316 imposes trust obligations on irrigation districts in their dealings with their patrons, no such relationship exists between Reclamation and its contractors. ORDER CLARIFYING MEMORANDUM DECISION.... Consolidated Subcase 91-63 (Oct. 4, 2004).

right 01-2064 is not subject to a trust.

IV. CONCLUSION.

Again and again Idaho Power has informed Congress, the United States and other water users that it has no more than a right to 45,000 acre-feet of storage space in American Falls Reservoir. This Court should not allow Idaho Power to reverse course and argue for more.

Even if this Court were to hear Idaho Power's claims, they have no merit. Idaho Power's claims to a storage water right constitute an improper collateral attack on the United States' license for American Falls Reservoir. Further Idaho Power had every opportunity to challenge the Director's decision to cancel its permit and failed to do so. The Company cannot remedy that failure by re-packaging its permit application as a beneficial use claim. Finally, as numerous courts have recognized, Reclamation contracts do not create trust obligations.

In short, even if Idaho Power's claims were not barred, the United States would be entitled to summary judgment disallowing each of Idaho Power's claims and for partial summary judgment directing that the United States water right 01-2064 is not burdened by a trust and that the quantity of water able to be released for hydropower purposes under that right is 45,000 acre-feet of water.

DATED this 17 day of December, 2009.

David W. Gehlert

RECEIVED
DEC 0 8 2009
DEPARTMENT OF
WATER RESOURCES

IGNACIA S. MORENO
Assistant Attorney General
Environmental and Natural Resources Division
DAVID W. GEHLERT
Natural Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, Colorado, 80294
Phone: (303) 844-1386
Fax: (303) 844-1350

Counsel for the United States of America

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

In Re SRBA	)	Subcase Nos.: 01-02064, 01-10485,
	)	01-10486, and 01-10487
Case No. 39576	)	
	)	AFFIDAVIT OF
	)	DAVID A. JARVIS

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

AFFIDAVIT

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

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

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

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

4. I attest that attached as Exhibit A is a true and correct copy of the Letter from James C. Tucker of Idaho Power to Michael Holliday at Idaho Department of Water Resources, dated December 21, 2005.

5. I attest that attached as Exhibit B is a true and correct copy of the Report of the Regional Director, dated October 1, 1946.

6. I attest that attached as Exhibit C is a true and correct copy of Contract No. Ilr-733, dated June 15, 1923.

7. I attest that attached as Exhibit D is a true and correct copy of the Application for License, Project No. 18, dated February 1, 1922.

8. I attest that attached as Exhibit E is a true and correct copy of the Application No. R21475 dated, June 13, 1921.

9. I attest that attached as Exhibit F is a true and correct copy of the Letter of District Counsel B. E. Stoutemyer, dated March 18, 1921.

10. I attest that attached as Exhibit G is a true and correct copy of the Memorandum of Agreement, dated March 17, 1921.

11. I attest that attached as Exhibit H is a true and correct copy of the Memorandum of Leo Bresnahan, Idaho Asst. Attorney General, dated February 10, 1933.

12. I attest that attached as Exhibit I is a true and correct copy of the Letter from R. E. Shepherd, President of the American Falls Reservoir Dist., to R. W. Faris, Commissioner of Reclamation, dated May 7, 1931.

13. I attest that attached as Exhibit J is a true and correct copy from the Letter from the Idaho Commissioner of Reclamation to Idaho Power Company, dated September 29, 1932.

14. I attest that attached as Exhibit K is a true and correct copy of the Letter from the Idaho Commissioner of Reclamation to Idaho Power Company, dated December 31, 1932.

15. I attest that attached as Exhibit L is a true and correct copy of the Letter from James L. Boone, attorney for Idaho Power Company, to District Counsel B. E. Stoutemyer, dated April 25, 1932.

16. I attest that attached as Exhibit M is a true and correct copy of the Federal Power Commission License for Project 18, dated May 11, 1934.

17. I attest that attached as Exhibit N is a true and correct copy of Contract No. Ilr-801, dated October 1, 1934 and adopted May 9, 1935.

18. I attest that attached as Exhibit O is a true and correct copy of excerpts from Hearings Before a Subcommittee on Irrigation and Reclamation of the Committee on Public

Lands House of Representatives and a Special Subcommittee of the Committee on Interior and Insular Affairs United States Senate, 81st Congress, on H.R. 5506, commencing August 8, 1949.

19. I attest that attached as Exhibit P is a true and correct copy of License and Certificate of Water Right for Water License No. R-269/01-2064, dated July 9, 1942 (two copies are provided to improve clarity of document).

20. I attest that attached as Exhibit Q is a true and correct copy of Memorandum Decision (In the Matter of Permit Nos. 01-2041 and 01-2065 in the Name of Idaho Power Company), dated April 21, 1971.

21. I attest that attached as Exhibit R is a true and correct copy of the Letter from H. R. Moore, Vice President of Idaho Power Company, to State Dept. of Reclamation, dated November 9, 1967.

22. I attest that attached as Exhibit S is a true and correct copy of the Letter from E. C. Kierstad of Idaho Power Company to R. W. Faris, Commissioner of Reclamation, dated October 8, 1932.

23. I attest that attached as Exhibit T is a true and correct copy of Answer to Order to Show Cause (In the Matter of Permits No. 15201/01-2041 and R-273/01-2065 in the Name of Idaho Power Company), dated December 1, 1970.

24. I attest that attached as Exhibit U is a true and correct copy of Order of Cancellation (In the Matter of Cancellation of Permit to Appropriate the Public Water of the State of Idaho No. 15201/01-2041 in the Name of Idaho Power Company, dated April 22, 1971.

25. I attest that attached as Exhibit V is a true and correct copy of S. Rep. No. 93-223, dated June 13, 1973.

26. I attest that attached as Exhibit W is a true and correct copy of the Falling Water Contract between American Falls Reservoir District and Idaho Power Company, dated March 31, 1976.

27. I attest that attached as Exhibit X is a true and correct copy of excerpts from Hearing Before the Subcommittee on Water and Power Resources of the Committee on Interior and Insular Affairs United States Senate, 93rd Congress, on S.1528 and S. 1529, held May 10, 1978.

28. I attest that attached as Exhibit Y is a true and correct copy of excerpts from Hearing Before the Subcommittee on Water and Power Resources of the Committee on Interior and Insular Affairs House of Representatives, 93rd Congress, on H.R. 6781, H.R. 6782, and S. 1529, held October 6, 1973.

29. I attest that attached as Exhibit Z are true and correct copies of an excerpt from the 1969 Water Distribution and Hydrometric Work Report showing Storage Allotments and also an excerpt from the 2009 Water District 1 Storage Report showing reservoir space by user assuming full reservoirs.

30. I attest that attached as Exhibit AA is a true and correct copy of H.R. Rep. No. 93-701, dated December 6, 1973.

31. I attest that attached as Exhibit BB is a true and correct copy of H.R. Rep. No. 94-531, dated October 3, 1975.

32. I attest that attached as Exhibit CC is a true and correct copy of S. Rep. No. 94-570, dated December 16, 1975.

33. I attest that attached as Exhibit DD is a true and correct copy of Contract No. Ilr-733S ("Spaceholder Contract"), dated March 31, 1976.

34. I attest that attached as Exhibit EE is a true and correct copy of an excerpt from the 1978 Water Distribution and Hydrometric Work Report showing Table 11.

35. I attest that attached as Exhibit FF is a true and correct copy of the Letter from James C. Tucker of Idaho Power Company to J. William McDonald, Regional Director of U.S. Bureau of Reclamation, dated October 18, 2001.

36. I attest that attached as Exhibit GG is a true and correct copy of the Letter from the Regional Director of U.S. Bureau of Reclamation to James C. Tucker of Idaho Power Company, dated December 31, 2001.

37. I attest that attached as Exhibit HH is a true and correct copy of the Resolution of the American Falls Spaceholder Executive Committee, dated January 6, 1973.

38. I attest that attached as Exhibit II are a true and correct copies of Notices of Publication (dated March 17, 1941) re Notice of Proof of Application of Water to Beneficial Use for Water Right License No. R-269.

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// // // // // // //

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DATED this 4th day of December, 2009.

David A. Jarvis

SUBSCRIBED AND SWORN to before me this 4th day of December, 2009

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

KARMEN T. ROBINSON NOTARY PUBLIC STATE OF COLORADO
My Commission Expires 3/27/2013

Exhibit A

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 it's 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 B

UNITED STATES DEPARTMENT OF THE INTERIOR

JULIUS A. KRUG, Secretary

WATER SUPPLY

for

PALISADES RESERVOIR PROJECT

IDAHO

BUREAU OF RECLAMATION

MICHAEL W. STRAUS, Commissioner

Region I

R. J. Newell, Regional Director

Project Planning Report No. 1-5.17-1

Boise, Idaho
October 1946

ADDRESS ALL COMMUNICATIONS TO
THE COMMISSIONER

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
WASHINGTON 25, D. C.

OFFICE OF THE COMMISSIONER

Nov. 29, 1946

MEMORANDUM

To: Secretary J. A. Krug

From: Michael W. Straus, Commissioner

Subject: Water supply for Palisades Reservoir Project, Idaho.

I present herewith, in connection with the authorized Palisades Reservoir Project, the report of the Regional Director, Region 1, with respect to conservation of water for irrigation use in the Upper Snake River Valley of Idaho.

The report and the underlying material, which present a comprehensive analysis of water supply problems in the Upper Snake River Valley, were prepared to provide a basis for these matters:

(a) Negotiation of water savings agreements with the existing users in the area;

(b) Negotiation of repayment contracts with prospective users of storage space in Palisades Reservoir; and

(c) Selection of the most satisfactory plan for the ultimate use of the 433,000 acre-feet of reserved space in American Falls Reservoir.

Negotiation of the water savings agreements is of vital importance to the Palisades Reservoir Project because its full benefit can be realized only if average annual savings of water in the amount of 435,000 acre-feet can be effected through stoppage of present wasteful non-irrigation season diversions, and because the authorization of the dam was made contingent on being assured of substantial water savings. We have set at present as our goal to be met prior to commencement of construction an assured annual average saving of 283,000 acre-feet.

The several specific recommendations for carrying out the major purposes above discussed are set out in paragraph 41 of the Regional Director's report. These cover: (a) the goals as to average annual water savings; (b) the proposed operating plan for Palisades Reservoir, including a proposal as to joint use of the top 900,000 acre-feet of space for flood control and irrigation; (c) the use of unsold space in American Falls Reservoir for development of not less than 37,000 acres of new land in the North Side Pumping Division of the Minidoka Project, a Bureau of Reclamation project, and not more than 30,000 acres of new land in the Michaud Unit of the Fort Hall

Project, an Indian irrigation project; and (d) the plan to begin negotiations with water users immediately even though the giving of a cost estimate for irrigation space must be deferred. Criticism of the proposals here stated is expected from several groups, but we are convinced that our position is in the interest of the best use of the water supply in the area.

Actual authorization of the proposals for irrigation of new land depends on studies yet to be made and reports yet to be submitted, but it is necessary at this time to indicate the intended disposition of this reserved space. The proposal with respect to the Michaud Unit is concurred in by the Commissioner of Indian Affairs, as indicated by his endorsement below.

I concur in the recommendations of the Regional Director and recommend that you approve them.

/s/ Michael W. Straus

Commissioner.

Enclosure 798

I concur Dec. 5, 1946

/s/ John H. Provinse

ASSISTANT Commissioner of Indian Affairs.

Approved: Dec. 6, 1946

/s/ Oscar L. Chapman

Acting Secretary of the Interior.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
REGION I
Boise, Idaho

October 1, 1946

To: The Commissioner, Bureau of Reclamation

From: Regional Director, Region I, Boise, Idaho

Subject: Water Supply for Palisades Reservoir Project, Idaho.

Transmittal

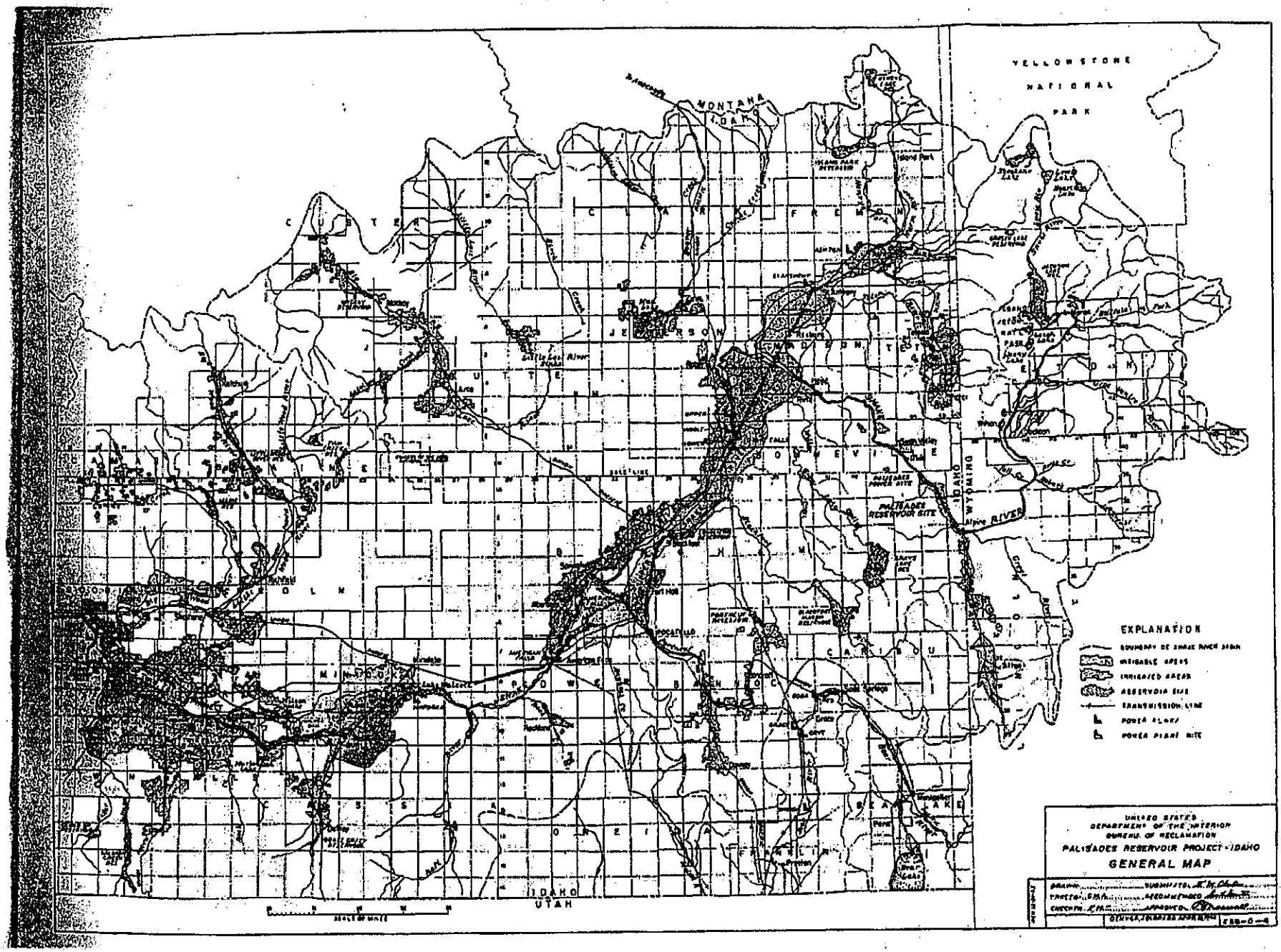
1. Herein is transmitted my report on means of conserving water for irrigation use in the Snake River Valley of Idaho. The conservation measures presented, together with operation of the Palisades Reservoir, previously authorized for construction, will materially increase the water supply available for existing irrigation projects and will permit the development of new land.

2. This summary report presents a digest of a detailed appended report and makes specific recommendations on actions that should be taken prior to the construction of Palisades Reservoir.

3. The primary purpose of both reports is to furnish factual information which will serve as a basis: (a) for negotiation of water-savings agreements with present water users; (b) for negotiations of repayment contracts with prospective users of storage water from Palisades Reservoir; and (c) for selection of the most satisfactory plan for future utilization of the 433,000 acre-feet of reserved space in American Falls Reservoir. I recommend that you approve the report and transmit it to the Secretary of the Interior for his approval in order that it may be presented to the water users in the Snake River Valley.

Authority for the Report

4. This report is authorized to be made by virtue of the Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof or supplementary thereto, known as the Federal Reclamation Laws. The securing of water saving agreements with present water users in the Snake River Valley is a prerequisite to construction of Palisades Reservoir specifically recognized in representations made by the Department of the Interior to the 77th Congress, 1st Session, in House Document No. 457. In his letter of November 1, 1941, submitting the "Report on the Palisades Dam Project" to the


YELLOWSTONE
NATIONAL
PARK
MONTANA
IDAHO
WYOMING
UTAH
PALISADES RESERVOIR SITE
Alpine RIVER
EXPLANATION
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
PALISADES RESERVOIR PROJECT - IDAHO
GENERAL MAP

Secretary of the Interior, the then Commissioner of Reclamation stated in part:

> ". . . The project is desirable in the public interest. Its success, however, depends on the conservation of 135,000 acre-feet of water now wastefully used, and on the willingness of the irrigators to pay $1 per acre-foot per annum for stored water which they will use. These matters can be adjusted in future negotiations, and construction should not be initiated until appropriate assurances have been received. . . ."

In transmitting the same report to the Congress on December 9, 1941, the Secretary of the Interior stated in part:

> ". . . The Director of the Bureau of the Budget has informed me that there would be no objection to the submission of this report to the Congress. He added, however, 'that. . . it. . . would be contrary to the program of the President to submit any. . . estimate [of appropriation for construction of the project] until local interests have given satisfactory assurance to the Secretary of the Interior that they will eliminate the wasteful use of water in the area to be affected by the project. . .'"

Cooperation and Acknowledgement

5. The investigative work upon which this report is based was undertaken by the Bureau of Reclamation at the request of the water users in the project area. A resolution requesting the study was unanimously adopted by their representatives at a meeting at Burley, Idaho, on November 21, 1941. During the course of the investigation, the officers of the various canal companies and irrigation districts serving the project area furnished data from their office files and provided general information needed to carry on the studies. The personnel of the District Office of the Geological Survey at Idaho Falls, Idaho, assisted materially in collecting all available records of stream flow and canal diversions in the project area. These records and the information given in the annual reports by the Snake River Watermaster were utilized in the water supply and river operation studies made during the investigation. Many useful data were also obtained from the Geological Survey's Water Supply Paper 774.

Description of the Area

6. The report deals with the control and use of water in the entire watershed of the Snake River above Milner Dam. The area that

can be served directly from Palisades Reservoir is limited to the presently developed projects and potentially irrigable lands along the Snake River between Heise and Milner Dam. It was necessary, however, to conduct a basin-wide water-supply study in order to arrive at a basis for coordination of the operation of the new reservoir with the operation of the several existing reservoirs. A further objective of the studies was to determine the possibility and effect of eliminating winter operation of canals in all areas where this practice is now current. The investigation of present water use and of possible water conservation measures was confined to the irrigated portion of the Henrys Fork Valley below Ashton and the irrigated area in the Snake River Valley which is served by canals diverting from the main stream between Heise and Milner Dam. In the study of possibilities for elimination of winter diversions and reduction of summer diversions in the Henrys Fork Valley it was necessary to consider the present irrigation development in the Mud Lake area, where the water supply is influenced by the heavy use of water in the Henrys Fork Valley.

7. The Snake River rises on the west side of the Continental Divide, in the southern part of Yellowstone National Park, and flows southward through Wyoming for about 130 miles between the Teton and Wind River mountain ranges. Upon entering Idaho, it turns westward through the Caribou and Snake River mountains and emerges onto the Snake River Plain at Heise, Idaho. Downstream from the mouth of the tributary Henrys Fork River, about 17 miles below Heise, the main stream of the Snake heads southwest and crosses southern Idaho in a broad arc. The Henrys Fork River, the largest tributary above Milner Dam, rises along the west side of the Yellowstone National Park; and its two main tributaries--Fall and Teton rivers--drain the west slope of the Teton Mountain Range. The heavy snows which blanket the watersheds of the Snake and Henrys Fork rivers during winter give rise to heavy run-off during the spring and summer. The annual inflow to the Henrys Fork and Snake River valleys from the two watersheds averaged 6,500,000 acre-feet during the 1919--42 period, or about 800 acre-feet from each square mile of drainage area. Climatic cycles, however, have caused a variation of as much as 40 percent from this annual average run-off. As a result, a considerable amount of hold-over reservoir storage space is needed to permit even an approach to full use of the average annual run-off for irrigation purposes.

8. The peculiar geology of the Snake River Plain, across which the river flows after leaving the mountains, is a deterrent to making full use of the water resources above Milner Dam. The plain occupies a structural depression in the impermeable basement rock and was built up to its present level by repeated lava flows. The intermittent lava flows, originating mostly from volcanic eruptions along the northern foothills, obliterated the original drainage

pattern and gradually shifted the main stream channel toward the southeast, leaving a series of buried channels in their wake. The porous fill material underlying the surface of the plain acts like a mighty sponge which absorbs natural precipitation and takes water from surface streams to maintain an immense underground reservoir and subterranean stream flow. The many buried river channels intercept the present river channels above American Falls, and some water flowing in the rivers drains into them. The buried channels form the main arteries of a subterranean stream network which discharges a steady flow of about 8,000 cubic feet per second through spring outlets in the north wall of the Snake River Canyon below Milner Dam. Losses into these subterranean channels from the channel of the Snake River and deep percolation of irrigation water from most of the cultivated land on the Snake River Plain have prevented the full utilization of the large stream flow entering the upper reaches of the Henrys Fork and Snake River valleys.

9. Waters of the Snake River have held a key position in the economic development of the area. From a small beginning in the early eighties, the irrigated area has been extended to include about 1,200,000 acres of land at the present time. Of this total, 110,000 acres are irrigated in the Henrys Fork Valley, and 950,000 acres are irrigated in the Snake River Valley by canals diverting from the main stream between Heise and Milner Dam. The construction of storage reservoirs has accompanied the expansion of the irrigated area. At the present time there are three reservoirs with a combined active capacity of 221,000 acre-feet in the Henrys Fork watershed and three reservoirs on the main stem of the Snake River with an aggregate, active capacity of 2,582,000 acre-feet usable for irrigation. Hence, about 2.6 acre-feet of storage space are available for each acre of irrigated land dependent on these reservoirs. American Falls Reservoir is the key unit in the storage system because of its large capacity (1,700,000 acre-feet) and its strategic location in the center of the irrigated area where it can capture return flows.

10. Practically all of the population and most of the wealth of the area are concentrated in the irrigated portions of the Henrys Fork and Snake River valleys. The outstanding cash crops produced on the irrigated lands are potatoes, sugar beets, and beans. The valley is justly famous for its production of the high quality Idaho Russet potato. Approximately 90 percent of Idaho's potatoes are grown on about 110,000 acres in this area. About one third of the irrigated area is devoted to the growing of hay, primarily alfalfa. Grown in rotation with cash crops, it provides feed for farm livestock and winter feed for the important range livestock industry of the area. The valley as a whole is one of the richer agricultural communites in the entire

11. Eleven hydroelectric power plants with a combined capacity of 99,675 kilowatts have been established on the Snake and Henrys Fork rivers in the area covered by this report. Five, with an aggregate capacity of 12,200 kilowatts, are run-of-the-river plants above American Falls. The operation of these plants does not interfere with irrigation water supply. The remaining six plants, with the much greater combined capacity of 87,475 kilowatts, are located below American Falls and utilize some storage space in American Falls Reservoir. Power production at these six plants has been decreased in recent years in order to conserve water for irrigation. Moreover, further, larger decreases are in prospect under the water-conservation measures proposed in this report.

Water Supply Problems

12. The most rapid expansion of the irrigated area occurred during the first two decades of this century when the North Side Twin Falls and South Side Twin Falls projects were developed under the Carey Act, and the Minidoka Project was brought in under the Reclamation Laws. Development of the 570,000 acres in these three projects more than doubled the area irrigated from Snake River between Heise and Milner Dam. The need for storage reservoirs to regulate the flow of the Snake River was recognized at an early date; and Jackson Lake Reservoir, the first major storage facility on Snake River, was constructed to a capacity of 847,000 acre-feet in 1916. When this reservoir failed to fill and a serious water shortage occurred on almost every project in 1919, it was realized that far more storage regulation was needed, and an immediate drive was initiated to obtain it.

13. The drought in 1919 and the ensuing concerted action by the water users resulted in the construction of American Falls Reservoir in 1927. Stream flow records up to that date indicated that the reservoir would fill during every year; and that, in combination with storage already available in Jackson Lake, three fourths of the capacity of the American Falls Reservoir would meet all needs of existing projects. Accordingly, only three fourths of the American Falls storage space was assigned to existing irrigation projects. The remaining capacity was reserved for development of new land.

14. An unprecedented drought which began in 1929 caused serious water shortages on the existing projects and gave rise to the fear that even the augmented water supply was not adequate. All plans for development of new land were temporarily laid aside, and the reserved space in American Falls Reservoir was leased to the existing projects in 1931. Even with full use of American Falls Reservoir, most of the existing projects still suffered serious water shortages in 1931, 1934, and 1935. The present lease of the reserved space

remains in effect through October 31, 1946. It is expected that arrangements will be made to assure that a substantial portion of the reserved space will continue to be available for the use of existing projects until another reservoir is constructed for their use.

15. In part because of the unpredictably low run-off, American Falls Reservoir failed to fill during any year from 1929 to 1935. In part, however, failure to fill was the result of heavy drafts made on inflow to the reservoir during the winter for purposes of producing power downstream and of supplying through the canal systems domestic and stock water to cities and farms. An insignificant proportion of the water diverted through the canals during the non-irrigation season can be utilized for the latter purposes. Hence, about 500,000 acre-feet of water which could otherwise have been stored for irrigation use, were drawn from the river every winter for power and domestic purposes. These practices, established long before the reservoir was built, are deep-rooted and difficult to alter.

16. Thus the problem confronting the valley today is finding ways and means of increasing the water supply to assure that irrigation needs can be met during periods of abnormally low run-off such as occurred during the years 1929--1937. Elimination of justifiable fears of water shortage on existing projects should precede any additional development of new land. The firm supply of irrigation water can be increased at least cost by a combination of additional storage space on the Snake River above Heise and elimination of the present wasteful diversions from the river during the non-irrigation season. Palisades Reservoir, which has multiple purposes among which costs can be allocated, offers the most promising opportunity for securing additional irrigation storage space at reasonable cost.

Proposed Water Conservation Program

17. At the request of the water users, the Bureau of Reclamation made a detailed investigation of the present use of water in the Henrys Fork and Snake River valleys. The field investigation was started in 1942 and completed in 1944. The principal objectives of the study were (a) to determine the extent of all possible water conservation measures which can be adopted without serious injury to existing irrigation projects and (b) to determine the amount of water which can be saved by these measures. The study revealed that elimination of winter diversions for domestic and stock-watering purposes is the only measure which is economically feasible at the present time. Large, additional amounts of water may be saved by lining of canals if and when a lining is developed which is sufficiently inexpensive to permit its widespread adoption.

18. The present heavy use of water in the Henrys Fork Valley results from subirrigation of about 70,000 acres of land in that area. This practice was established during the early stages of development, after irrigation by customary surface methods proved a failure. A wide variety of crops is grown by maintaining the water table within reach of the plant roots during the summer instead of by spreading water on the surface of the ground in the usual manner. The hydraulic properties of the underground reservoir permit the raising and lowering of the water table by varying the flow of water in the canals. The canals must be operated at partial capacity during winter to hold the water table at a level from which it can be raised to the plant roots in the spring after the ice and snow in the canals have melted. Present schedules of annual diversion to the subirrigated lands have been evolved through the experience of 40 years in manipulating the water table to give maximum crop production during the relatively short growing season in that area. Hydrographic studies have shown that relatively large quantities of ground water move westward toward Mud Lake as a result of maintaining high water tables in the Henrys Fork Valley. This ground-water movement has caused a phenomenal increase in the inflow to Mud Lake since 1900 and has made possible the development of a dependable water supply for 28,000 acres now irrigated in that area. In view of these facts, it has been concluded that the present use of water in the Henrys Fork Valley cannot be curtailed without adversely affecting crop production in that valley as well as in the Mud Lake area and that, taking all factors into account, there is no adequate justification for seeking to disrupt these established communities.

19. The proposed water conservation program in the Snake River Valley differs somewhat between the areas above and below American Falls Reservoir. Above American Falls Reservoir, the program involves elimination of winter diversions for domestic and stock watering purposes in all areas where the ground-water movement is not tributary to the river above Milner Dam. These areas include the portion of the irrigated land on the east side of the river between the Great Feeder and the town of Firth and all of the irrigated area on the west side of the river, except that served by the Aberdeen Canal. The water table under most of the land served by this canal is tributary to the Snake River above Milner Dam. The canals serving these non-tributary areas could be shut off during winter if all farmsteads were equipped with wells. Free movement of ground water through the broken lava formation and the filtering of surface waters through the soil mantle and alluvial deposits insure an ample yield and a satisfactory quality of water in all wells. The fact that all of the cities and somewhat more than 80 percent of the farmsteads now obtain domestic water from wells indicates the desirability of well water for

domestic use. The depths of wells on these farms range from 40 to 200 feet. Additional wells which it would be necessary to drill would have similar depths. Water drawn from wells is far less subject to pollution than that now obtained from open canals. The fact that farm owners in the area have drilled wells and have equipped them with adequate pumping facilities indicates that the cost of the required wells is within the means of individual farm owners.

20. The water conservation program in that portion of the Snake River Valley below American Falls Reservoir involves the elimination of winter operation of canals for domestic and stock-watering purposes in the Minidoka Project, the North Side Twin Falls Project, and the South Side Twin Falls Project. The canal systems serving the latter two projects have been operated throughout the winter since their construction in order to provide domestic and stock water. As in the upper valley, an alternative supply of domestic and stock water must be provided before these canals can be shut off in winter.

21. All of the farmsteads in the Minidoka Project are fully equipped with wells, and the canals serving that project have not been operated in January, February, or March for several years. Some water has been diverted in November and December in recent years, however, for convenience in watering livestock in the fields during the harvest season. The fact that no diversions were made in those months during 1942 indicates that the practice could be eliminated without undue hardship. Hence, under the proposed water saving program it is expected that no water will be diverted in the future by this project after the end of the irrigation season.

22. Equipping all farmsteads on the North Side Twin Falls Project with wells is the most practicable method of providing an alternate source of domestic water so that canals of the project may be shut off during winter. All of the cities, towns, and industrial establishments in the project area now obtain their water supplies from wells. Moreover, a field inventory in 1942 showed that 905 farmsteads, or 60 percent of the total in the project, had adequate well facilities and were not dependent on the canals for domestic and stock water. The remaining 592 farmsteads would have to be equipped with wells before the canals could be shut off during the winter. The depth of the required wells averages 280 feet and ranges from 80 to 480 feet. Although the cost of the deepest wells required would be relatively high, many wells of comparable depth have been developed by the farm owners in the same vicinity in order to obtain a better quality of water than that available from the canals. The large volume of ground water flowing freely beneath the project insures an adequate yield from all wells without excessive drawdown. Chemical analyses of several representative

samples of the ground water indicate that it is suitable for domestic use. It is far less subject to pollution than canal water. The present widespread development of farm wells and the fact that all of the cities obtain their water supplies from such sources adequately demonstrate that well water is superior to canal water for domestic use. The ultimate goal, therefore, should be to equip all farmsteads with adequate well facilities in order that the large quantity of water now diverted during the winter may be stored in reservoirs and used for irrigation.

23. Procurement of water of satisfactory quality for domestic use has been an acute problem in the South Side Twin Falls Project since it was first settled. Many wells have been drilled in the project, but with very few exceptions the water obtained is unsuitable for domestic use. Twin Falls and Buhl, the two largest towns in the project, depend upon the canal for municipal water. The canal water is filtered and chlorinated before delivery to the Twin Falls residents, but at Buhl it is only chlorinated. Chemical analyses of the water from 43 representative wells distributed at 3-mile intervals show an average total hardness of 424 parts per million and a concentration of total dissolved solids ranging from 468 to 1340 parts per million. In all samples except one both the hardness and concentration of dissolved solids were in excess of the upper limits prescribed by the United States Public Health Service for drinking water of good chemical quality. Water-softening equipment will reduce the total hardness to acceptable limits; but such equipment is costly and it will not reduce the concentration of dissolved solids. Because of the stagnant nature of the ground water, it has an undesirable taste and is subject to pollution in many areas. It has been concluded, therefore, that the ground water in the project area is not suitable for domestic use.

24. Inasmuch as a well program cannot be recommended for the South Side Twin Falls Project, a satisfactory supply of water for domestic use must be provided by some other means before the Twin Falls Canal can be shut off during winter. A thorough study of all possible ways and means of providing an alternative source of domestic water showed that the most practical and economical plan is to draw water from Murtaugh Lake (a small regulating reservoir on the main canal seven miles southwest of Milner Dam), purify and soften it in a central treating plant, and deliver it under pressure to all farm homes and cities through an underground pipe system. An extensive distribution system, involving somewhat more than 600 miles of 2-inch to 48-inch pipe, would be required to deliver the treated water to all farms and cities. The cost of constructing the entire water system, designed with sufficient capacity to serve the anticipated population 40 years hence, is estimated at

about $14,000,000, based on prices prevailing in 1946. The cost of operating and maintaining the system for 40 years will average about $240,000 per year. Water-rate studies have shown that the construction costs must be financed without interest over a period of at least 40 years in order to provide the treated water at a cost which the prospective consumers can afford. Because the operation of such a domestic water system would result in the saving of a large quantity of water for irrigation use, the Government would be justified in financing the construction cost without interest under the Reclamation Laws. With the construction cost financed over a 40-year period without interest, treated water could be delivered to city reservoirs at a cost of 16 cents per 1,000 gallons and to farm homes at an average cost of 20 cents per 1,000 gallons. These rates compare favorably with those prevailing in many large cities in the United States and in the cities and towns of southern Idaho. The many advantages which the pure, soft water piped to each farm home would have over the present supply of domestic water from canals should amply justify the additional expenditure which would be involved for some farm families. Town dwellers would benefit from a superior domestic water supply at little or no increased cost, and the softness of the water from the proposed system would be attractive to established and to new industries.

25. In summation, the proposed water conservation program calls for elimination of all winter diversions from the main stream of the Snake River to areas above American Falls with non-tributary ground water. Below American Falls, the program involves cessation of winter diversions to the Minidoka and the two Twin Falls projects. Measurements of the diversions to and surface return flow from the non-tributary areas above American Falls during the winters of 1942--43 and 1943--44 showed that the inflow to American Falls Reservoir would be increased about 135,000 acre-feet annually if all canals serving areas with non-tributary water tables between Heise and American Falls Dam were shut off from November 1 to April 1. Shutting off all canals below American Falls during the same period would result in a net storable saving of about 300,000 acre-feet of water annually. Somewhat more than half of this saving (152,000 acre-feet) would be realized by shutting off the South Side Twin Falls Canal. The estimate of water savings below American Falls is based on the average recorded winter diversions since 1936, allowing (a) for the water required to operate the Twin Falls Domestic Water System and the continued two-week autumn run of the Gooding Canal to fill cisterns and (b) for the increase in power releases from American Falls Reservoir that would be needed to offset the reduction of inflow to the river between Minidoka Dam and Shoshone Falls. Thus, a total of 435,000 acre-feet of water could be saved annually if the full winter water-conservation program were carried out. In dry years this amount of water could be stored in reservoirs and made available for irrigation of land during the summer.

26. The water saved by elimination of winter diversions would be considered, from the standpoint of irrigation use, in the same manner as any other natural flow in Snake River and would accrue to the reservoirs in accordance with the priority of their respective storage rights. During extremely dry years, such as 1934 and 1935, all of the saved water would accrue to American Falls Reservoir, thereby greatly firming the yield of that reservoir. Consideration has been given to the possibility of securing a special right to store all of the water saved by elimination of winter diversions in Palisades Reservoir. To do so, however, would require determinations of the amount of water saved. Such determinations would raise controversies and uncertainties which would make administration difficult and which probably could be resolved only after costly and time-consuming litigation.

Use of Reserved Space in American Falls Reservoir

27. The manner in which the 433,000 acre-feet of reserved space in American Falls Reservoir is used in the future will vitally affect the ultimate extent and stability of irrigation development in the Snake River Valley. Local desires with respect to the use of the reserved space are conflicting. Present water users wish to utilize it in conjunction with Palisades Reservoir to reduce water shortages on presently irrigated lands in extremely dry years. Other large groups of public-spirited citizens desire that this reserved space be used to develop new land. The Bureau of Reclamation has made a thorough study of both proposals in order to determine the merits of each and to select and recommend a plan which would insure the greatest benefit to the greatest number of people. The two alternatives, which have been designated as Plan A and Plan B, are described in the following paragraphs.

28. Under Plan A the reserved space in American Falls Reservoir would be used to provide a supplemental supply of stored water for the existing projects. In order to extend advantages of the low-cost and firm yield of American Falls storage to a greater area than at present, the cost and yield of the American Falls reserved space would be pooled with the cost and yield of Palisades space. Although the combined space would be sold as a unit, as if it were all in one reservoir, the amount of stored water accruing to the pool each year would be computed on the basis of the priority of the storage right of each reservoir. No development of new land would be in prospect under this plan inasmuch as existing projects would probably acquire all of the pooled space.

29. Under Plan B the reserved space in American Falls Reservoir would be used for development of new land, and Palisades Reservoir would be used to provide a supplemental supply of stored water for the existing projects. In order to make the most efficient

use of the water supply, the American Falls reserved space would be used to store water for the irrigation of new land in the North Side Pumping Division of the Minidoka Project and in the Michaud Unit of the Fort Hall Project. New land in the Michaud Unit is included in this plan because it is the only large area of good irrigable land from which the deep percolation losses and surface waste will return to American Falls Reservoir where they can be regulated and re-used for irrigation of other lands downstream. The location and approximate extent of these two projects of new lands are shown on the general map following page 1. Detailed investigations of these projects will be needed to determine the exact acreage that can be irrigated in each.

River Operation Studies

30. Elimination of winter diversions from the main stream and operation of Palisades Reservoir will substantially increase the supply of stored water available for irrigation use in the Snake River Valley. A series of operation studies of the river system under these changed conditions was made to determine whether the total available water supply will be adequate to meet the irrigation requirements with and without development of new land. The operation studies covered the 24-year period from 1919 to 1942. This includes the lowest run-off during the period of record, which extends back to 1896. Starting with the Henrys Fork system of reservoirs and irrigation projects, the operation studies were conducted progressively downstream by applying diversion requirements to the water supplies available at selected control points. The diversion requirements for existing projects were estimated by adjusting recorded monthly diversions to reflect the irrigation practices and cropping programs anticipated in the future. River losses and gains under future operating conditions were estimated by means of a correlation of recorded losses and gains with recorded diversions during the period of study. These derived irrigation requirements, river losses, and river gains were applied to the recorded stream flows to determine surplus flows available for storage and deficiencies that would have been met by releases of stored water. In order to have conserved the maximum amount of stored water for use in dry years, it was assumed that irrigation storage would have been released first from the farthest downstream reservoir that could serve the irrigated lands. Since it was assumed that water users in the Henrys Fork Valley would not utilize space in the Palisades Reservoir, no storage water would have been released from that reservoir for their use. Sufficient water would have been released from Palisades Reservoir every winter to maintain a firm output of 15,000 kilowatts at the Palisades power plant. It would have been necessary to release water from Jackson Lake Reservoir during winter in critical dry years in order to maintain this

Exhibit C

Symbol I1r-733

C O N T R A C T

Between the United States and the Idaho Power Company,

Relative to Power Rights at American Falls, Idaho.

Dated June 15, 1923.

DEPARTMENT OF THE INTERIOR

UNITED STATES RECLAMATION SERVICE

MINIDOKA IRRIGATION PROJECT.

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

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

2. Purpose and Plans of United States.

WHEREAS, the United States contemplates the construction of a large reservoir at American Falls, Idaho, to store the flood water and winter flow of Snake River and make the same available for the reclamation of large areas of public lands of the United States including the North Side Pumping Division of the Minidoka Project and other portions of the Snake River Valley, and to supplement the water supply of various projects in the Snake River Valley now having an inadequate or insufficient water supply during part of the irrigation season. And

3. Company Public Service Corporation.

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

4. Interference with Rights of Company.

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

5. Use of Property Owned by Company.

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

6. Company's Prior Filings at American Falls.

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

to the company under this contract.

7. Need of United States for Power.

AND WHEREAS, the said proposed North Side Pumping Division of the Minidoka Project of the United States is a pumping project and the United States will require in connection with the said project a large power plant for the development of a large amount of electric power for pumping water upon the lands of the said project.

8. Mutual Covenants.

NOW, THEREFORE, WITNESSETH: That for and in consideration of the covenants and agreements of the parties herein, upon the conditions herein named, the parties covenant and agree:

9. Property to be Conveyed to United States.

The Company hereby agrees, upon the terms and conditions hereinafter stipulated, to sell and by good and sufficient deed convey to the United States of America, free of tax liens and of liens or incumbrances created, granted or imposed by itself or its public utility predecessors, all its right, title and interest in and to the following described real estate, situated in the counties of Power and Bingham, State of Idaho, to-wit: (a) The property described in the list of land descriptions hereto attached as Exhibit "A" and made a part of this contract; and any other real property owned by the company, if any such there be, under the proposed dam or reservoir to be

constructed by the United States in connection with the American Falls Reservoir project; the said proposed dam to be located and constructed upstream from the company's American Falls Dam as now constructed and north of the right of way of the Oregon Short Line Railroad Company's bridge property as now located at American Falls; the title to be conveyed to the United States in all cases to be as full and complete as title as the company has, Provided, however, that to the extent hereinafter expressly provided and to no greater extent than hereinafter expressly provided, and subject to all the terms, conditions and provisions hereinafter set out, the Company shall have and there is reserved to the Company, the right to store the water which it is to receive from the Proposed American Falls Reservoir, upon that part of the property and rights described in Paragraph 9, located within the reservoir, and agreed to be conveyed by the Company to the United States insofar as such reservation to the Company does not conflict with any of the rights hereinafter granted or agreed to be allowed to the United States or any of the limitations or restrictions hereinafter agreed to be placed upon the rights of the Company.

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

The following described parcel of land situated in Lot 5 Sec. 31, T. 7 S., R. 31 E., B. M., beginning at a point on the low-water line, on the West bank of Snake River where the continuation (in a straight line) of the North boundary line of lot five of section thirty-one Township seven south of Range thirty-one east of Boise Meridian, would intersect the said low-water line on the West bank of Snake River; thence west along said north boundary line of said lot five for a distance of 211.5 feet to a stake on the south boundary line of the right of way of the Oregon Short Line Railroad; thence westerly along the south boundary line of said right of way, for a distance of 270 feet to a stake; thence South 43° 14' East for a distance of 386 feet; thence due East to the intersection of the low-water line on the west bank of Snake River; thence along the low-water line on the said west bank of said Snake River, following the meandering thereof, to the point of beginning, containing about two acres, more or less reserving to the Company from said property in said lot five, rights of way and easements for occupancy and use by the Company for the purpose of erecting, operating and maintaining electric transmission lines, and structures and equipment appurtenant thereto for substation, sectionalizing and switching purposes, said rights of way and easements, including the right of ingress and egress over the property of the United States, to be located as mutually agreeable to the

United States and the Company.

Also the following described piece or parcel of land situated in Lot 12 of Section Thirty (30) Township Seven (7) South, Range Thirty-one (31) East of the Boise Meridian, commencing at a point on the west bank of the Snake River where the easterly boundary line of the right of way of the Oregon Short Line Railroad Company intersects the said bank of Snake River; thence running along the bank of said Snake River in a southerly direction for a distance of eighty feet; thence in a straight line in a westerly direction to the intersection of the east boundary line of said railroad company's right of way one hundred and seventy-five feet; and thence along the easterly boundary line of said railroad right of way to the place of beginning.

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

direction along the east boundary of said Lot 12 to the southeast corner of said Lot 12; thence in an easterly direction along the south boundary of said Sec. 30 to a point where a due north and south line, through a point 25 feet due east from the southeast corner of what is known as the Island Plant power house belonging to the Company, intersects the south boundary of said Sec. 30; thence due north to the center line of the Oregon Short Line Railroad as now located; thence in a straight line in a north-westerly direction to the point of intersection of the east toe of the intake to the said Island Plant with the downstream toe of the company's American Falls dam; thence along the toe of the east face of the east pier or abutment wall of the headworks of said Island plant to the upstream toe of the company's said American Falls dam; thence southeasterly along the upstream toe of that portion of the company's said American Falls dam which the company will retain to the easterly toe of the division dam to be constructed by the United States between the westerly end of that portion of the company's dam which the company will retain and the government's proposed American Falls reservoir dam (referred to in Paragraph 15 of this agreement): thence in a straight line in an easterly direction to the point of beginning, and all rights of the Company in the tailrace from said Island and West Side plants; and the United States shall have and there is granted to the United States the right of ingress and egress

for pedestrian traffic over the Company's wood-steel bridge leading from the east bank of Snake River to the said Island Plant, so long as said bridge may be maintained by the Company, reserving to the Company, and the Company shall have the right and easement of junction, tie, abutment and support of the portion of the Company's American Falls dam to be retained by it to the portion of said dam to be conveyed to the United States and to the headworks of said Island Plant and to said division dam to be constructed by the United States between the portion of the Company's dam to be retained by it and the Government's proposed American Falls reservoir dam; reserving further to the Company the west portion of the Company's dam as described and with the limitations contained in Paragraph 9 (c), and reserving further to the Company and the Company shall have the right and easement of junction, tie, abutment and support of the Company's said wood-steel bridge upon the property adjacent to said Island Plant; and reserving further to the Company and the Company shall have the rights and easements of flowage and pondage on and over the premises conveyed to the United States under this agreement and lying south of the down stream toe of the Government's proposed American Falls dam and east of said proposed division dam and the headrace or works of said Island Plant for the purpose of utilizing the Company's water rights and rights to the use of water; and further reserving to the Company, and

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

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

(c) The property described in Exhibit "B" attached hereto and made a part hereof; and the west portion of the present dam and spillway at American Falls up to and including the intake to the Island plant; reserving, however, to the company all and every of the rights it now has to use, maintain and operate said property in connection with the use, maintenance and operation of its East Side plant, until such time as the United States has constructed the division dam in accordance with the provisions of Paragraph 15 hereof and has made the provision for the discharge of water into the pool between the government's proposed American Falls reservoir dam and the Company's East Side plant in compliance with the terms of said Paragraph 15, Provided that the United States shall, after making second payment, have the right to demolish such portion of the present dam and spillway at American Falls west of the Island plant intake as may be necessary for the construction of the proposed government power plant and other works at American Falls, providing that by so doing no interference is had with the operation of the Company's East Side Plant.

(d) All the company's water rights, appropriations water filings and permits, at American Falls, or used or intended to be used in connection with the company's power plants and proposed plants at American Falls, except the rights, whether primary or tertiary, expressly reserved to the company, as hereinafter set out. The water rights of the company transferred to the United States for use for power purposes shall be considered as impressed with a right in the United States to change the use of such water from power to irrigation or to store the same for irrigation whenever the Secretary of Interior shall decide that such water is required for irrigation purposes. But it is expressly agreed and understood that the water rights and rights to the use of water which it is herein agreed that the Company shall have are reserved out of its existing appropriations and rights as independent rights under its own filings and appropriations and of the dates of priority to which the Company is entitled under such appropriations and are not to be considered as mere contract rights under contract with the United States.

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

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

The United States shall have and the company hereby grants to the United States as against the company a secondary power right at American Falls to that amount of water which will generate continuously for delivery from the generator bus bars in the Government power station at American Falls 6,700 kilowatts beginning on April 1st, increasing uniformly to 25,000 kilowatts on May 1st and to 30,000 kilowatts on June 1st, continuing at that amount to August 15th, inclusive, then decreasing uniformly to 25,000 kilowatts in September 15th, and to 5,500 kilowatts on October 31st, and none from November 1st to March 31st inclusive, except in connection with the 10,000 kilowatts as authorized in Paragraphs 24 and 19 hereof. In no case, however, except as authorized by Paragraph 13, shall the water utilized under this power right exceed 1,500 second-feet on April 1st, increasing uniformly to 5,000 second-feet on May 1st, and to 6,000 second-feet on June 1st, continuing at that amount to September 15th inclusive, and decreasing uniformly to 1,500 second-feet on October 31st. The secondary power right granted to the United States under this paragraph shall be inferior and subordinate to the primary power right reserved to the company in paragraph 10 hereof, and shall be prior and superior to all power rights of the company at American Falls other than the rights reserved under Para. 10 here and the right to the storage provided in Para. 19. Provided,

however, that if the Company, through the refusal, for any reason, of the United States or its successors in control of said reservoir to comply with the terms of this agreement, fails to receive for its own use at its plants at American Falls, unless its right to such water has been taken under the power of eminent domain, the amount of water and at the times and in the manner contemplated by this agreement, it shall have the right to make up such deficiency (during the time of such refusal and no longer) out of the appropriations, water filings, and permits which it now holds, and the amount which the United States shall have the right to store or use out of said appropriations, shall be reduced accordingly. It is agreed and understood that errors or inaccuracies in the release or delivery of water from the reservoir shall not be construed as a refusal by the United States to comply with the terms of this agreement. Nothing contained in this contract shall be construed to make the United States in any way responsible for the delivery of the water to any of the plants of the Company after the same has been released by the United States for the Company from the reservoir at American Falls.

12. Company's Additional Summer Power Right.

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

as released or wasted by the United States from April 1st to October 31st inclusive over and above the amounts required to furnish the primary rights reserved to the company in paragraph 10 hereof, and the secondary right granted to the United States under Paragraph 11 hereof.

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

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

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

for such day.

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

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

15. Outlet Works and Division Dam for Company

The United States will provide for the company in the proposed dam to be constructed by the United States discharge works sufficient for a 6,000 second-feet delivery with a loss of head net not to exceed two feet. Such discharge works shall discharge into the pool between the proposed reservoir

dam and the company's east side plant and shall be as low as and similar to the outlets connecting with the power plant to be constructed by the United States, and shall be so constructed that the company may and is given the right to attach its penstocks directly thereto and shall be provided with protecting devices similar to those to be provided for the intakes to the proposed Government power plant at American Falls. The United States shall construct and maintain as a part of the American Falls storage dam, a division dam between the westerly and of that portion of the company's American Falls dam which the company will retain, and the Government's proposed American Falls Reservoir dam to an elevation five feet above the present concrete crest of company's dam, and of sufficient strength to retain the water on the easterly side up to the crest of said dam, and provision shall be made whereby the Company shall not be required during any flood to discharge over that portion of the company's American Falls dam and spillway retained by the company any greater portion of the flood than would have been discharged over that portion retained had said dam and spillway not been changed from its present condition.

16. Company's Primary Storage Capacity.

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

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

17. Operation and Maintenance Charges

For the purpose of determining the operation and maintenance charge to be paid by the company, each acre-feet of secondary storage capacity provided for in Paragraph 18 shall be considered as the equivalent of 7/20 (seven-twentieths) of an acre-foot of primary storage capacity and the company will pay to the United States each year a proportionate part of the total cost of operation and maintenance of the reservoir, and distribution of the waters therefrom to the head of the ditches and to the power plants of the company diverting water from Snake River below said reservoir in the proportion that 134,250 acre-feet is of the total available capacity of the reservoir plus 89,250 acre-feet, the times, conditions, and manner of billing or stating such charge to

the company and of paying the same to the United States to be the same as provided in the contracts between the United States and the various irrigation companies and districts cooperating in the construction of said reservoir.

18. Company's Secondary Storage Capacity.

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

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

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

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

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

20. Company Right to Primary Storage Water.

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

21. Company's Rights below Milner Dam

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

tioned in Paragraph 18 as is needed for beneficial use for power development at Shoshone Falls or Twin Falls but not exceeding the amount that may be necessary to make the total flow at the head of Shoshone Falls:

790	second-feet	October 1st to November 30th, incl.
890	" "	December 1st to January 31st, "
790	" "	February 1st to February 12th, "
690	" "	February 13th to April 15th, "
790	" "	April 16th to June 10th, "

exclusive of any part of the company's said 45,000 acre-feet of primary storage and the water referred to in the last sentence of Paragraph 10.

Provided, however, that the amount of water released past Milner for maintaining the flow at Shoshone Falls between October 1st and June 10th inclusive, as listed above, shall be a part of the 255,000 acre-feet of primary storage water which the Company may have stored in its secondary storage capacity in the reservoir, and provided that it releases such water from the American Falls Reservoir in such a way that the required flow can be maintained at Shoshone Falls by the utilization of storage capacity in Lake Walcott not to exceed 3,000 acre-feet of storage capacity.

Nothing in this paragraph is to be construed as abridging the Company's right to release from the Reservoir and have passed by Milner at any time any part of its 45,000 acre-feet of primary stored water stored in its primary storage capacity, or held over as provided for in Paragraph 20.

10. Company's Primary Summer Power Right.

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

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

The above described power right so reserved to the company shall be considered as prior and superior to all other rights at American Falls. The company may also have a primary right to use at any time any water brought to American Falls by it from beyond the Snake River water shed, or any stored water acquired by the company from storage capacity hereafter constructed above American Falls provided that it is understood and agreed that the company's right to store water, except water brought by the company from beyond the Snake River watershed, in such capacity above American Falls shall be inferior and subordinate to the right of the United States to provide for building and to fill and use 3,000,000 acre-feet of storage capacity, including the capacity of the American Falls Reservoir anywhere on Snake River in addition to the storage capacity now available in Jackson Lake Reservoir and Lake Walcott.

22. Twin Falls Power Site.

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

23. Government's Winter Power Rights.

In securing the winter power not exceeding half-hour peak of 10,000 kilowatts provided for the United States under paragraph 19 hereof, the United States shall secure at the Minidoka Power plant so much of said power as it is reasonably practicable to secure from the installed machinery at said plant without releasing water which otherwise might be held for irrigation, generating at American Falls the balance, if any, of the amount required. Nothing herein contained shall be construed to prevent the United States from obtaining the ten thousand kilowatts at its American Falls plants when the Minidoka plant, is closed or out of operation on account of enlargement, improvement or repairs.

24. Storage Rights of United States and Winter Waste.

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

to store in the American Falls Reservoir for use for irrigation and domestic purposes and for the power use set forth in Paragraph 11 and for the development of an amount of power not exceeding 10,000 kilowatts, half-hour peak, as defined in Paragraph 19, all of the storable water at American Falls not specifically reserved to the company or granted to the company as against the United States. The company reserves and as against the United States shall have the right to use for power purposes at American Falls water released or wasted between November 1st and March 31st, inclusive, in excess of the amount herein specified to be allowed to the United States for power under the foregoing provisions of this contract. The availability of water for waste shall be determined by the U. S. Reclamation Service by assuming a year beginning October 1st of 200,000 acre-feet less storable run-off than the lowest year of record at the time of such determination, and such water as under this assumption is not necessary to provide 300,000 acre-feet for the company and to fill existing storage capacity will be considered available for wasting. Until some lower year is observed the lowest year of record shall be deemed to have a storable run-off of 1,500,000 acre-feet, including the 300,000 acre-feet reserved to the company. The United States agrees that such water as may be available for waste during the winter shall be released as nearly uniformly as may be practicable, or in such other manner as

to secure its reasonable availability for beneficial use for power development. During the development period, the company shall have the right to use for power purposes, until demanded by the United States, the water granted to the United States for power purposes, but this water shall be available for use by the United States for power purposes, on its demand.

25. Release of Liens.

The company shall secure from the trustee, or other person or persons having power to release, and shall deliver to the United States a valid release of all the property and rights described in Para. 9 (a) to 9 (e) inclusive, and Para. 24 from the lien of any mortgage, deed of trust or other incumbrance created or granted by the company or its public utility predecessors and a release of all tax liens.

26. Abstract.

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

626. deducted from the purchase price.

27. Payments by the United States.

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

the company's right, title and interest to the West Side and Island plants, other than water rights except as herein otherwise provided and land described in Paragraph 9 (b) and release from tax liens and other liens agreed to be released in Paragraph 25 and concurrently with the receipt of the third instalment, the company shall deliver to the United States the deed and assignment of the properties described in Paragraph 9 (c), and concurrently with the receipt of the fourth instalment shall deliver the deeds and assignments of the remainder of the property and rights herein agreed to be conveyed. Provided that the company may retain the possession and use of all the property herein agreed to to be conveyed or assigned until the first annual instalment has been paid, but that upon the payment of the first annual instalment the United States may take possession of the land needed for the proposed dam and reservoir as described in Paragraph 9 (a), and upon payment of the second annual instalment may take possession of the West Side power plant and Island Plant and be entitled to use so much water under the existing appropriations now owned by the Company and used in connection with said plants, as may be necessary for the operation of said plants to their respective capacity, provided, however, that the right of the United States to the use of such water shall terminate absolutely upon the transfer of the water rights to be conveyed by the Company under Paragraph 9 (d) hereof, or upon the vesting of the water rights

mentioned in Paragraph 31 hereof upon the failure of the United States to make certain payments, and provided further, that the water used by the United States at said plants shall not be deducted from the amount of water which the Company is entitled to receive after the rights of the Company become restricted to the amounts specified in Paragraphs 10 and 19 hereof, and neither the consent of the Company to the use of such water nor the use of such water by the United States, shall operate to vest any title or permanent right to the use of such water in the United States, and the United States may take possession of all of the channel west of and including the Island plant and headrace, and property described in 9 (b), but it is understood and agreed that the company may retain the possession and use of all of the other property and rights herein agreed to be conveyed or assigned to the United States until the completion of the payments herein provided for. The United States may pay any instalments before due and thereupon shall be entitled to take the property and receive the deeds provided to be taken or delivered upon the payment of such instalment. It is expressly understood that the first instalment to be paid by the United States hereunder includes the claim of the company for reimbursement for all expenses of whatsoever kind which it has incurred in connection with the consummation of this contract, including surveys, investigations, examinations, and opinions of experts, and for obtaining data and inform-

ation upon which to base this agreement.

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

As against the United States the company shall be entitled to continue the use of the water at American Falls covered by the company's present appropriations and filings (except such as the United States may become entitled to use to operate the Island and West Side Plants under this agreement) until such time as the 45,000 acre-feet of primary storage capacity herein granted to the company shall have been first provided for the Company and until that time the company shall be entitled to right of way over the lands and rights conveyed to the United States by the company and located in the bed of the river for the purpose of and to the extent necessary for such continued use by the company of said filings and appropriations in so far as such right of way can be used by present structures and extensions without increasing the hazard of flooding the construction work of the United States. Nothing in this contract shall be construed as giving the company a right to demand right of way or flowage easement across any land unwatered for construction purposes by the United States except to the extent necessary to pass the natural flow of the river.

29. Distribution System in American Falls.

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

the present town of American Falls or connecting the distribution system in said town with its generating plants, or to have released the United States from any damages to said poles, lines, distributing system or such other property on account of the relocation of said town made necessary by the construction and operation of the proposed reservoir.

30. Reservation in Deed of Reserved Rights.

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

31. Failure of Appropriation.

Where the payments of this contract extend beyond the current fiscal year it is understood that the contract is made contingent upon Congress making the necessary appropriations for expenditures thereunder after such current year has expired. In case such appropriation as may be necessary to carry out this contract is not made the company hereby releases the United States from all liability due to the failure of Congress to make such appropriation.

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

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

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

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

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

It is the understnading and intent of the parties that the storage capacity rights herein granted to the company shall be vested rights in it but that if by change of Law, a court or commission decision or in any other way than by errors or inaccuracies in delivery or release of water from the reservoir the company shall be refused or denied the right to and use of said capacity or any thereof, the Company shall be entitled to recover the damages which it may suffer, and to such other relief as a court of competent jurisdiction may adjudge the Company entitled to under the terms of this agreement and the situation of the parties, but in case of any errors or inaccuracies in the delivery or release of water the company shall have and be limited to the same rights and redress as provided for the Irrigation Companies and Districts in the contracts, the form of which is attached hereto and marked Exhibit "C", between the United States and the Irrigation Companies and Districts cooperating with the United States in the construction of the Reservoir.

33. Liens and Incumbrances.

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

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

34. Effective when Signed By the Secretary.

This agreement shall become effective to bind the United States to purchase said premises immediately upon its approval or signature by the Secretary of the Interior, provided, however, that it shall be of no further force or effect unless signed by the Secretary of the Interior, within ninety days after its execution by the Company and authorization, ratification or approval by the board of directors of the company which shall be evidenced by a certified copy of the resolution filed with the Director of the Reclamation Service.

35. Binding on Successors and Assigns.

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

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

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

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

37. Cooperation with reference to Water Rights.

In complying with the laws of Idaho relating to perfecting water filings made by either party at American Falls both parties shall cooperate so that to the extent permitted by statute and the administrative officers having jurisdiction, the construction of works and use by either party shall apply to proof on the permit of the earliest priority of the class on which such proof can be made. In the event the company desires to transfer and change the points of diversion and use, or any of them, of any of its appropriations, rights or permits now held by it in connection with the Island and West Side Power Plants, the Company as against the United States shall have the right at any time after the right of the United States to use the Company's water in connection with said Island and West Side Plants' terminates as provided in Paragraph 27 hereof, to transfer and change such points of diversion and use from the Island and West Side Plants to the East Side Plant, or any other plant or plants constructed by the Company at American Falls, subject to the

provisions and limitations of this contract in respect to the time of use and amount of water to which the Company may be entitled; and the United States shall cooperate with the company in making such transfer and change; and in the event the United States desires to transfer and change the points of diversion and use of the water rights or any part thereof conveyed to the United States by the Company and to which it may be entitled under the terms of this contract from the present points of diversion and use to any plant or plants owned by the United States at American Falls, the United States shall have as against the Company the right to make such transfer and change in such points of diversion and use subject to the provisions and limitations of this contract in respect to the time of use and amount of water to which it may be entitled, and the Company shall cooperate with the United States in securing such transfer and change.

38. Agency Clause.

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

estimating the contract price demanded by him, included any sum by reason of any such brokerage, commission, or percentage; and that all monies payable to him hereunder are free from obligation to any other person for services rendered, or supposed to have been rendered, in the procurement of this contract. He further agrees that any breach of this warrant shall constitute adequate cause for the annulment of this contract by the United States, and that the United States may retain to its own use from any sums due or to become due thereunder an amount equal to any brokerage, commission, or percentage so paid, or agreed to be paid: (Provided, however, it is understood that this covenant does not apply to the selling of goods through a bona fide commercial representative employed by the contractor in the regular course of his business in dealing with customers other than the Government and whose compensation is paid, in whole or in part, by commissions on sales made, nor to the selling of goods through established commercial or selling agents or agencies regularly engaged in selling such goods.)

39. Member of Congress Clause.

No Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment or either before or after he has qualified and during his continuance in office, and no officer, agent, or employee of the Government, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon.

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

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

UNITED STATES OF AMERICA

By (Sgd) Hubert Work
Secretary of the Interior

IDAHO POWER COMPANY

By (Sgd) F. F. Johnson
President

(Seal)

ATTEST:

(Sgd) Clarence T. Ward
Secy.

(Seal)

Approved except as to Exhibit "C"

(Sgd) W. G. Swendsen
Commissioner of Reclamation

Exhibit D

18

Project No. 2[illegible]

APPLICATION FOR LICENSE
(Act of June 10, 1920, 41 Stats., 1063)

TWIN FALLS PROJECT
SNAKE RIVER, IDAHO
IDAHO POWER COMPANY

(1) The Idaho Power Company, a corporation organized and existing under and by virtue of the laws of the State of Maine, and having its office and principal place of business at Boise in the state of Idaho, in pursuance of a preliminary permit asked for by this applicant on the seventeenth day of June 1920, does hereby make application to the Federal Power Commission for a license for a project described herein and shown on general and detailed maps signed by the applicant on the [illegible] day of February 1922, which maps are filed herewith and made a part hereof, said license to authorize the construction, operation and maintenance of certain project works, the principal ones of which are designated as follows on said maps:

(a) Dams and Reservoirs. Reinforced concrete dam approximately 897 feet long will be constructed at the site shown on Exhibit K, Drawing No. 5 to a final elevation of 3557 mean sea level. The initial construction will consist of raising the upstream cut off wall of the dam across the north channel to elevation 3507 mean sea level, this elevation being sufficient to divert the flow of water into the south channel. The ultimate construction will consist of building up from the preliminary dam a reinforced overflow section of dam to elevation 3557 mean sea level. This portion of dam will have a spillway length of 757 feet, a maximum height of 47 feet and will be equipped with construction sluiceways in its base.

The reinforced concrete dam to be built across the south channel will be a non-overflow section and in its initial stage will be constructed to elevation 3522 mean sea level, equipped with two sluiceways in its base for the purpose of discharging sand and gravel which may collect in front of the penstock intake. The ultimate construction of the south channel dam will consist of extending the height of the initial dam to elevation 3545 mean sea level and equipping it with two radial drop gates for the purpose of passing ice and floating debris which will collect in front of the intake. At its ultimate height this dam will have a top length of 160 feet and a maximum height of 50 feet.

The reservoir formed by the initial construction work on the dam will be very small as the normal water surface elevation will be only 3507 mean sea level. The reservoir formed by the construction of the dam to its ultimate height will extend up through the canyon a distance of approximately 28 miles and its capacity will be in accordance with the following table:

COPY-National Archives Record Group No. 3[illegible]

Contour	Acres	Total capacity in acre-feet
3505	31.03	0
3510	69.28	203.25
3520	105.24	1007.10
3530	124.99	1950.25
3537	153.64	2956.56

The land affected by the construction of the dam and its resultant reservoir is outlined on Exhibits J and K drawing No. 1.

(b) Penstock. An intake having a capacity of 1140 sec ft will be constructed at the east end of the south channel dam and it will be equipped with screens and gates so as to control the flow of water into the penstock and remove ice, floating debris, gravel and sand before the water enters the penstock. There will be one penstock to conduct the water from the intake to the unit located in a power house directly at the foot of the falls. this penstock will be 11 feet inside diameter with a total length of 170 feet, the top third of which will consist of a concrete lined tunnel, the middle third a reinforced concrete lined tunnel and the lower third a steel plate lined tunnel, the plate steel section conducting the water from the tunnel to the turbine inlet. The lower end of this penstock which is in steel will be given such a shape that it can be used as a venturi meter for the measurement of water utilized through the unit. A sectional elevation of this penstock is shown on Exhibit L, Drawing No. 4.

(c) Power House. The power house for this project will be located directly at the foot of the present south channel falls and will be a building having a concrete substructure which will contain the generating and control equipment and a steel frame superstructure of such design as to give easy access to the generating station from the top of the cliff.

This station will house one 17,000 hp vertical water turbine to operate at approximately 189.5 rpm under a normal head of 152 ft. The maximum head will be 158 ft, the minimum head during a short time in April and May may be as low as 144.5 ft. on account of the rise in tailwater during flood. This turbine will be direct connected to a vertical 12,000 kw, 6600 v, 3 phase, 60 cycle generator. The station substructure will contain all the auxiliary equipment necessary for the complete control and operation of this unit, such as switchboard, motor generator set, oil switches, instrument transformers, governor, lubricating oil and governor oil system, air washer and station transformers. Plans and sectional elevations of this power house are shown on drawings under Exhibit L, and these drawings are as follows:

Exhibit L-41 - Plan of Power House, Intake and South Channel Dam (I.P.No.F-13124)
" L-42 - Dam-Profile and Sections (" F-13128)
" L-43 - Power House Plans and Sections (" F-13125)
" L-44 - Sectional Elevation through Power House, Penstock and Intake (" F-13126)
" L-45 - Sectional Elevation through power house and [illegible] (" F-13127)

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The switchboard will be located at the top of the cliff on a plot of ground directly east of the south channel dam. It will contain the transformers, switching structure, high tension buses, switches, etc., for transforming the power and distributing it over the transmission lines extending from this station. The location and size of the switch-yard and number of outgoing lines are shown under Exhibit "E" Drawing #2, General Plan of Development.

It is the applicant's intention in the future to make this station a switching and sectionalizing point in the system to meet the normal growth which may occur in the next ten or fifteen years. In the future 132 kv lines may be built connecting the now separated portions of the applicant's power system and several additional 44 kv lines may be required for local distribution.

(a) Transmission Lines. The transmission lines included in this project will consist only of the short lines needed to connect this station to the Applicant's general transmission system.

(2) The location of the project applied for is as follows:

(a) In the State of Idaho.
(b) In the Counties of Twin Falls and Jerome
(c) On the following named stream: Snake River; navigable and carrying commerce to the following extent; none.
(d) In the region of the following named cities and towns:

The territory served by the applicant lies generally along the Snake River Valley from Blackfoot, Idaho, on the east to Homestead, Oregon, on the west. The system is now in two parts which are to be connected by transmission lines in the future; the eastern part comprises the towns and cities of Pocatello, Blackfoot, American Falls, Aberdeen and Fort Hall; while the western part contains the towns and cities of Oakley, Milner, Twin Falls, Jerome, Wendell, Hagerman, Gooding, Mountain Home, Boise, Emmet, Nampa, Caldwell, Payette, Weiser and Huntington, with other small villages.

(3) The proposed scheme of the development of the project is as follows:

A concrete reinforced dam across the Snake River which shall form a reservoir with 2900 acre feet capacity. From an intake located at the east end of this dam the water will be conducted through an 11 ft. penstock, 170 ft. long, to a power house located at the foot of the cliffs forming the south pool of the Twin Falls. The water will be utilized under an average head of 162 ft. to develop a maximum of 12,00 kw. of power. Transforms this power and transmit it into the applicant's distribution system as outlined under Exhibit "J" No. 2.

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(4) The proposed use or market for power to be developed is for light, general power and traction purposes; also for irrigation pumping, eleven large irrigation districts now being served under the applicant's system.

(5) The location and capacity of all power projects operated by the applicant, the markets supplied thereby and the relation thereof to the project applied for are briefly described as follows:

Name of Plant	Geographic Location	Era Rated Capacity
American Falls:		
East Side Plant	Sec. 31, Twp. 7 S., Range 31 EBM	5,000
West Side Plant	" 31 " 7 S., " 31 "	500
Island Plant	" 30 " 7 S., " 31 "	1,040
Shoshone Falls	" 35 " 6 S., " 17 "	11,000
Lower Salmon Falls	" 2 " 7 S., " 12 "	6,500
Thousand Springs	" 5 " 8 S., " 14 "	8,500
Malad	" 24 " 6 S., " 13 "	5,500
Dyer Falls	" 18 " 2 S., " 1 "	9,900
Horseshoe Bend	" 32 " 7 N., " 2 "	1,500
Oxbow	" 20 " 7 S., " 46 WBM	2,000
Barber	" 29 " 3 N., " 5 "	900

Idaho Towns and Vicinities Served.

American Falls	Eden	Kimberly	Pocatello
Aberdeen	Fort Hall	King Hill	Payette
Amsterdam	Filer	Kuna	Parma
Boise	Glenns Ferry	Marion	Pearl
Blackfoot	Gooding	Mountain Home	Rockland
Barber	Glenns Ferry	Murphy	Richfield
Bruneau	Hagerman	Middleton	Roswell
Bliss	Hammett	Meridian	Shoshone
Buhl	Hazelton	Milner	Star
Berger	Hollister	Nampa	Silver City
Caldwell	Hansen	New Plymouth	Twin Falls
Clover	Homedale	Notus	Wendell
Emett	Horseshoe Bend	Oakley	Weiser
Eagle	Jerome	Peavey	Wilder

Oregon Towns and Vicinities Served.

Copperfield	Homestead	Ontario
Gypsum	Halfway	Robinette
Huntington	Nyssa	

Exhibit K - Details of sale of power in Idaho

Large Irrigation Pumping Plants Served

Gem Irrigation District, in Owyhee County, Idaho.
Snake River Canal Company, in Owyhee County, Idaho.
Ontario-Nyssa Irrigation Company, in Malheur County, Oregon.
Wilson Irrigation District, in Owyhee County, Idaho.
India Cove Irrigation District, in Owyhee County, Idaho.
Snake River District Improvement Company in Owyhee County, Idaho.
North Side Pumping Company, Ltd., in Jerome County, Idaho.
Payette-Oregon Slope Irrigation District, in Malheur County, Oregon.
High Line Canal Company, in Twin Falls County, Idaho.
Owyhee Ditch Company, in Malheur County, Oregon.
Payette Heights Irrigation Company, in Payette County, Idaho.

The markets noted in the foregoing statement, and others in adjacent municipalities, which are shown on a map accompanying this application, are adjacent to this power project and are within practical transmission line distance from it. The continued agricultural, industrial and social growth of the territory served creates an increased demand for electric energy, the production of which depends upon water power development and the project applied for will play an important part in meeting this growth.

The applicant being a Public Service Corporation and being bound to provide the necessary electric energy for the continued growth and prosperity of the territory which it serves, makes this application with a view to supplying the immediate power demand.

(6) The following exhibits are filed herewith and are hereby made a part of this application:

Exhibit A - Reference to certificate of organization.
Exhibit B - Statement of organization and list of officers and directors.
Exhibit C - Field notes and description of Project Boundaries and Transmission Lines.
Exhibit D - Evidence that applicant has complied with requirements of the Laws of the State within which the project will be located.
Exhibit E - Statement of the nature, extent and ownership of water rights.
Exhibit F - Statement regarding government dams or other structures involved.
Exhibit G - Statement concerning ability of applicant to finance project.
Exhibit H - Statement of effect of project on stream flow.
Exhibit I - Statement of power capacity of project (F-13255).
Exhibit J - General map of entire project (F-13250) and general map of applicant's transmission system (F-13254).

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Exhibit K - Detail maps of entire project (F-15250)
(F-15122)
(F-15125)

Exhibit L - General design drawings .....(F-15128)
(F-15124)
(F-15125)
(F-15126)
(F-15127)

Exhibit M - Statement of mechanical, electrical and transmission equipment.

Exhibit N - Estimate of cost of developing project

Exhibit O - Statement of time desired to complete initial construction and date of beginning and final completion of the project.

IN WITNESS WHEREOF, the applicant has caused its name and corporate seal to be hereunto signed and affixed by E. W. Hill, its Vice-President, thereunto duly authorized this 1st day of February 1928.

IDAHO POWER COMPANY
By: E. W. Hill
Vice-President

(SEAL)

Attest:
E. P. Summerson
Assistant Secretary.

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EXHIBIT "H"

Statement of the effect of the proposed operation of the project works on the normal flow of the stream.

The project covered by this application is located approximately 16 miles below Milner, Idaho. Stream flow at the proposed site is, therefore, materially effected by the diversion of water at Milner into the North Side and South Side Twin Falls irrigation districts. Also by the diversion into the North Side and South Side Canals at Minidoka.

The effect of the Milner diversion is to completely stop the natural flow of water at Milner during a part of the irrigation season so that the only water available at Twin Falls is the make-up which amounts to about 400 sec.ft. This condition exists for about two months in a year of normal stream flow and approximately four months in a year of minimum flow. During the non-irrigating season there would be more than enough water to run the proposed power unit to capacity. The above outlines in general the present conditions of stream flow.

In the near future the flow will be further affected by the construction of a storage reservoir at American Falls by the U. S. Reclamation Service, to have an initial capacity of 1,500,000 acre feet and an ultimate capacity of 3,000,000 acre feet. Therefore, upon completion of the reservoir to its initial stage the only natural flow available at the site from the beginning of the irrigation season in April until the reservoir begins to spill, which in an average year will be about December 1st, and in a minimum year not until March or April, will be make-up from Milner to Twin Falls.

On account of the above situation there is an agreement pending between the United States of America represented by the Secretary of the Interior and Director of the Reclamation Service and the Idaho Power Company, whereby the Power Company retains the right to certain waters in the proposed reservoir to permit proper operation of its power plants located on the Snake River at American Falls and all sites below. Copies of this agreement are on file in the office of the Secretary of the Interior, but in the following paragraphs is an abstract from those parts of the agreement, which define certain of the water rights to be retained by or granted to the applicant for rights and property conveyed to the U. S. The numbers preceding these paragraphs are the same numbers which precede corresponding paragraphs in the agreement.

(10) The company reserves a primary right at American Falls to use the following amounts of water during the following periods of each year; 100 sec ft beginning April 1st, increasing uniformly to 2500 sec ft on May 1st, and continuing at that amount to Sept. 15th inclusive, then decreasing uniformly to 100 sec ft on October 31st, and none except that hereinafter provided from Nov. 1st to March 31st inclusive.

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Exhibit E

273

29-2550

01-2065

Application for a Permit to Construct the American Falls Reservoir

And to Store the Unappropriated Waters of the State of Idaho

Application No. R 21475
Permit No. R 273
District No. 70

Cancelled

1. Name of Applicant: Idaho Power Company

Postoffice Address: Boise County: Ada State: Idaho.

If applicant is a corporation, give:

(a) Date and place of incorporation: May 6, 1915; Augusta, Maine
(b) Amount of capital stock: $ 16,310,000.00
(c) Amount paid in: $ 16,293,500
(d) Names and addresses of directors: Geo.A.Bremer,Jerome,Ida.;J.W.Cunningham,Boise,Ida.; E.H.Dewey,Hampo,Ida.;James Duckworth,Blackfoot,Ida.;G.E.Crossbeck,New York,N.Y.;E.F.Johnson, Boise,Ida.;W.P.Lyon,Caldwell,Ida.;O.G.F.Markhus,Boise,Ida.;D.F.McGee,New York,N.Y.;E.J.

If The financial resources of the applicant are: (a) Cash on hand: $208,199.98/Ostrander,Twin Falls,Ida. (b) Treasury stock: $ 16,500.00 (c) Bonds to be issued: $3,000,000. Treasury/W.R.Putnam, (d) Other resources: 30,788,185.28 Bonds (Pledged)Boise,Ida.;D.W.Standrod,Pocatello Ida.;E.R.Tinker,New York,N.Y.; E.A.VanSicklin,Kaiser Ida.;Wm.T.Wallace,New York,N.Y.; H. J. Ward, Hyssa, Oreg.

2. Quantity of water to be stored 300,000 acre feet per annum

3. Source of water supply Snake River & Tributaries, which is a tributary of Columbia River

4. Water is to be used for: Power Purposes

5. The outlet of the proposed reservoir is located North 12 degrees and 30 minutes West 1450 feet distant from the Southwest corner of Section 29, , T. 7 S , R. 31 E, B. M., and is in the S½ S½ of Section 30 , T 7 S , R 31E, B. M., County of Power (See Remarks "B")

6. Fill out either (a) or (b)

(a) The reservoir is located in the channel of Snake River

(b) The reservoir is to be filled through the Feeder Canal, which has a width at bottom of ft., width at top of ft., depth of ft., average grade per mile ft., capacity cubic feet per second

7. (a) The area of the high water line of the reservoir is 22,000 acres

(b) The available capacity of the reservoir is 300,000 acre feet.

8. Height of dam: about 34 feet; length of dam at top 3600 feet; length of dam at bottom 2950 feet.

Material used in dam: concrete

9. The estimated cost of proposed reservoir is $ 2,000,000

10. Amount of land to be irrigated acres; said land being described in Use Permit mentioned in Paragraph 13 herein which Use Permit is hereby referred to and made a part hereof.

11. The time required for the completion of such work is 5 years

12. The water stored in accordance with this permit will be conducted to the place of use through the canal constructed under the terms of Permit No , filed by on (See Remarks)

13. IT IS KNOWN that the undersigned hereby makes application for permit to construct a reservoir and to store the unappropriated waters of the State of Idaho as herein set forth

IDAHO POWER COMPANY , Applicant.

By W. R. Putnam , Agent.

01-2065

273

Commissioner of Reclamation

Date of first receipt at office of ~~State Engineer~~ 2:30 P. M. March 17, 1921.

Returned to applicant for correction April 16, 1921.

Corrected application received June 13, 1921.

Commissioner of Reclamation.

Approval of ~~State Engineer~~

The number of this Permit is R 273

Recorded in book R 1 Page 273 Approved June 28, 1921.

This is to certify that I have examined the within application for a permit to construct a reservoir and to store the unappropriated public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:

Bond in the sum of $ to be filed on or before under Use Permit No. 15201

Work to begin on or before and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which the permit holder has no control

One-fifth of the work above specified to be completed on or before December 21, 1923.

The whole of said work to be completed on or before June 21, 1926. - E. to June 21-1931

Beneficial use of water stored in accordance herewith to be made on or before June 21, 1932.

as set out in Permit No 15201 for the appropriation of the public waters of the State of Idaho, which is hereby referred to and made a part hereof.

Witness my hand this 28th day of June, 1921.

W. G. SWENDSEN, ~~State Engineer~~
Commissioner of Reclamation.

Remarks: The water stored in accordance with this Permit will be conducted through The Snake River and the Works constructed under the terms of the following Appropriations and Permits to the points of use as therein set forth, and in each instance returned to Snake River as therein stated:

1. Appropriation under Water Location by Andrew J. Tarbet for 6000 C. F. S. of the waters of Snake River on July 15, 1901, recorded in Blaine County, Idaho in Book 4 of Water Rights at Page 266.

2. Appropriation under Water Location by J. H. Brady for 2000 c. f. s. of the waters of Snake River on August 1, 1901, recorded in Blaine County, Idaho, in Book 4 of Water Rights at Page 265.

3. Permit No. 4168 for 6000 c. f. s. of the waters of Snake River, issued by the State Engineer of the State of Idaho to American Falls Power Company on Application filed September 3, 1908.

4. Permit No. 14067 for 4600 c. f. s. of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to Idaho Power Company on Application filed April 7, 1919.

5. Permit No. 13947 for 1500 c. f. s. of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to E. C. Kiersted on application filed December 26, 1918.

6. Permit No. 14909 for 500 c. f. s. of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to Idaho Power Company on Application filed June 25, 1920.

7. Appropriation under Water Location by I. B. Perrine for 1000 c. f. s. of the waters of Snake River on November 1, 1901, recorded in Lincoln County, Idaho, in Book 1 of Water Rights at Page 241.

8. Appropriation under Water Location by Arturus Z. Conrad for 1000 C. F. S. of the waters of Snake River on September 13, 1902, recorded in Lincoln County, Idaho, in Book 1 of Water Rights at Page 261.

9. Permit No. 14881 for 1000 c. f. s. of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to Idaho Power Company on Application filed August 9, 1920.

10. Permit No. 13948 for 5000 c. f. s. of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to H. C. Kierstead on Application filed December 26, 1918.

11. Permit No. 3685 for 6000 c. f. s. of the waters of Snake River, issued by the State Engineer of the State of Idaho to Fentress Hill on Application filed May 11, 1908.

12. Appropriation under water Location by Joseph H. Hutchinson for 10000 c. f. s. of the waters of Snake River on January 17, 1900, recorded in Owyhee County, Idaho, in Book 3 of Water Rights and Millsites at Page 750.

13. Appropriation under Water Location by Joseph H. Hutchinson for 10000 c. f. s. of the waters of Snake River on May 4, 1900, recorded in Owyhee County, Idaho, in Book 3 of Water Rights and Millsites at Page 761.

14. Permit No. 14362 for 4000 c. f. s. of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to Idaho Power Company on Application filed July 29, 1919, and,

15. Permit No. 15201 by Idaho Power Company according to Application No. 21479 filed on March 17, 1921.

Remarks "B" - The point of diversion specified (North 12 degrees and 30 minutes West 1450 feet distant from Southwest Corner of Sec. 29, in Twp. 7 South, of Range 31 E.) is subject to such amendment and change as actual economical development may necessitate.

See order granting extension of time for completion of works, recorded under Permit No. 15201.

Exhibit F

BES-FH.

Boise, Idaho, Mar. 16, 1921.

From - District Counsel, B. E. Stoutemyer.

To - Chief Counsel, Washington, D. C.

Subject- Negotiations with Idaho Power Company in connection with American Falls Reservoir - Minidoka Project.

1. Referring to the conference between the representatives of the Reclamation Service and the representatives of the Idaho Power Company, in New York, in February, 1921, on above subject:

2. One of the suggestions made at that conference by the representatives of the Idaho Power Company was that if the Power Company should itself make a filing with the State Commissioner of Reclamation for the 300,000 acre-feet of water rights proposed to be retained by the Company, it might avoid some serious legal difficulties if the Company could then reserve the water rights which it held under its permit, and it would not be necessary for the Government to grant to the Company the rights proposed, and that might simplify the legal situation.

3. Mr. McGee stated that they would be perfectly willing to agree that any such filing made by the Company should be subject to the terms and conditions of the contract between the United States and the Company if we succeed in reaching an agreement, and that if no agreement is reached, he would be willing that the filing made by the Company should be released.

4. This suggestion was referred by Mr. McGee to the representatives of the Idaho Power Company in Boise and was considered by their local attorneys, Richards & Haga, who advised that they thought it would be best not to insert this understanding in the water filing, but to provide for the same in a separate agreement.

5. I prepared a form of stipulation covering this point, for signature by the Company, which form has been modified in some respects by the representatives

of the Company and finally signed and delivered to me.

6. I enclose a copy of the form of agreement which has been signed by the Idaho Power Company.

- - - - - - -

enc.

R. E. STOUTEMYER.

By FH.

CC-C.E. with enc.
P.M., American Falls, Idaho, with enc.
P.M., Boise, Idaho, with enc.

Dictated by Mr. Stoutemyer,
but signed in his absence.

Exhibit G

MEMORANDUM OF AGREEMENT.

WHEREAS, the United States contemplates the construction of a large reservoir at American Falls and has been negotiating with the Idaho Power Company for the purchase of certain rights and property of the Idaho Power Company which will be needed by the United States in connection with said reservoir,

AND WHEREAS, the said parties contemplate and have partially agreed upon a proposed contract for said purpose, under which it is proposed that the Company shall have certain rights in the proposed reservoir, the proposal of the United States with reference thereto being more particularly set out in the letter dated February 28th, 1921 from the Director of the United States Reclamation Service to the Idaho Power Company,

AND WHEREAS, the United States has prepared a water filing or application for said proposed reservoir and intends to file the same in the office of the Commissioner of Reclamation of the State of Idaho,

AND WHEREAS, the Idaho Power Company has also prepared an application which it desires to file in the office of said Commissioner of Reclamation for the storage of approximately three hundred thousand (300,000) acre feet of water in said reservoir or in a reservoir proposed to be constructed by the Idaho Power Company at American Falls,

NOW, THEREFORE, the Idaho Power Company hereby agrees:

(a) That upon the United States delaying the filing of its application until after the filing by the Idaho Power Company of the application which it intends to file as aforesaid, the said application of the Idaho Power Company, and any permit issued thereon and the rights acquired by the Idaho Power Company thereunder, shall be held, used and enjoyed, subject to the terms and provisions of the contract that may be entered into between the United States and the Idaho Power Company with reference to the construction by the United States of said American Falls reservoir.

(b) That if such contract be not entered into within one year from date hereof, this agreement shall be without effect, provided however, that if the parties hereto should fail to agree upon the terms of the contract for the building of such reservoir and the United States should, nevertheless, conclude to proceed with the building of such reservoir, and shall commence within two years from the date hereof, a suit to condemn under the power of Eminent Domain, rights and property of the company at American Falls, including said permit, said permit shall be valued, in such suit or action, only at the amount of the filing fees paid in connection therewith in the office of the Commissioner of Reclamation.

Dated at Boise, Idaho, March 17th 1921.

IDAHO POWER COMPANY,

By J. A. Johnson
President.

Attest:
Clarence F. Ward
Secretary.

Exhibit H

OFFICE OF DISTRICT COUNSEL
U. S. RECLAMATION SERVICE
PORTLAND, OREGON.
FEB 16 1933
RECEIVED

MEMORANDUM

Re: Letter of R. W. Faris, Commissioner of Reclamation, under date of January 4, 1933, with a request of March 17, 1921. The application contains the following statement:

QUESTION:

Has the Idaho Power Company waived and abandoned all rights it might have acquired under its Permit No. R-273, to store water in American Falls Reservoir by entering into its contract with the United States Government? Does its rights in the premises rest upon such contract so that a certificate of completion of works could not be issued to divert water under its Permit No. 15801, where a certificate of completion of works has already been issued to the Government to divert an amount of water in excess of the capacity of the diversion works as now constructed? Is the Department of Reclamation barred and precluded by the Decree of the Federal Court from granting any right to store water in the American Falls Reservoir?

FEB2033 75611

OPINION: Under date of March 17, 1931, the Idaho Power Company made application No. R-31476 for permit to store 800,000 acre-feet of water in the American Falls Reservoir for power purposes, which was approved June 30, 1931, and Permit No. R-275 issued thereupon, with a priority of March 17, 1921. The application contains the following statement:

> "The water stored in accordance with this permit will be conducted through the Snake River and the works constructed under the terms of the following appropriations and permits to the points of use as therein set forth, and in each instance returned to Snake River as therein stated." (Here follows a list of 15 locations to which water is proposed to be returned to Snake River)

On June 30, 1931, proof of completion of works under Permit No. R-275 was submitted. This proof showed the following situation:

> "Dam was constructed by and on plans of U. S. Bureau of Reclamation on larger scale than contemplated under Permit No. R-275, and reservoir capacity was made greater, in accordance with Agreement, June 15, 1928, between United States of America and Idaho Power Company, a copy of which agreement is on file with Department of Reclamation of the State of Idaho."

The description of works recites among other things as follows:

> "American Falls Dam and Reservoir, as constructed by United States Bureau of Reclamation and as applicable to and under Idaho Power Company Water Permits Nos. 4160, 14067 and 16636 at American Falls."

Under date of March 17, 1931, as a companion-permit the Idaho Power Company made application No. 31476 and was granted Permit No. 15201, to divert 1800 second-feet of water from American Falls Reservoir, for power purposes,

with a priority of March 17, 1931. On June 30, 1931, proof of completion of works under the above mentioned permit was submitted, from which it appears among other things, as follows:

> "The works under Idaho Power Company Permit No. 15947 and its successors, Nos. 16785 and 17070, all at Twin Falls, have not been constructed because right-of-way upon federal lands, for which application is on file with Federal Power Commission, has not yet been secured. Permit No. 14909, at Twin Falls, has been relinquished to State of Idaho.
>
> "The works under Permit No. 15948 and its successors, Nos. 16784 and 17069, at Upper Salmon Falls, have not been completed but construction work is now in progress."

and also:

> "American Falls Reservoir Dam as constructed by U. S. Bureau of Reclamation; and as described in Idaho Power Company Water Permits Nos. 4168, 14067 and 10635 at American Falls, No. 14881 at Shoshone Falls, No. 3685 at Lower Salmon Falls, and No. 14868 at Swan Falls."

as a description of the works, etc. Otherwise there is no description of the works except through corroborated depositions.

We therefore, have two companion permits, one of which is a reservoir permit and the other is a water permit for storage purposes.

On May 10, 1951, the United States of America, acting through E. D. Darlington, Superintendent, Bureau of Reclamation, made proof of completion of works under its Permit No. R-369, with a priority of March 30, 1931, for the construction of the American Falls Reservoir Dam, and under date of July 12, 1938, received certificate of Completion of Reservoir and right to store water to the extent of 1,800,000 acre feet, being the full capacity of the reservoir.

In the case of Quigg Irrigation Company vs. Henry Dietz, et al., a memorandum decision dated December 10th, 1928, unreported, Judge Dietrich held in dismissing the action, "that where two applications are made and two permits issued, there is a cross-reference from one to the other showing that both relate to and cover the same general project. Here the plaintiffs hold only a permit to construct a reservoir. They have no water appropriation permit, and therefore they are not qualified to maintain an action of this character, which, it is to be borne in mind, is purely statutory."

"If, as plaintiffs argue, the appropriation permit held by the Commissioner of Indian Affairs be deemed to be involved and the two are to be considered as indissolubly connected and cover the same project, then we should consider the cost of the entire project as a single unit, and credit the permittee with the aggregate of his expenditures. There being no statutory authority for a reservoir permit, it follows that there is no statutory provision for contesting it, or for assailing its validity by a suit of this character, and therefore this action is without warrant of law."

If this decision has any weight it seems to me it amounts only to a holding by Judge Dietrich that an action will not lie to contest a reservoir permit alone as distinguished from a water permit.

Under date of June 25, 1929, in the District Court of the United States for the District of Idaho, Eastern Division, in the case of Woodville Canal Company vs. Clark and Edwards Canal and Irrigation Company, et al., the following water right was awarded:

"To the Secretary of the Interior of the United States of America, and his successors in office, for use upon the various projects which have heretofore or may hereafter become entitled to the same by reason of contracts with the United States therefor, the water filed upon by the United States in connection with the construction of the American Falls Reservoir under permit number 16184, and reservoir permit number R-369, under date of priority of March 30th, 1921, the amount of water to be decreed to the Secretary of the Interior of the United States and his successors in office for such use under said date of priority of March 30th, 1921, to be one million seven hundred thousand (1,700,000) acre-feet per annum for storage in the American Falls Reservoir and eight thousand (8,000) second-feet for direct diversion."

It does not appear that the Idaho Power Company was a party to this suit. It appears that in the Foster Decree, which was confirmed in the aforesaid Woodville Decree, that the Secretary of the Interior was awarded the use of the waters of the Snake River diverted at the Minidoka dam in the amount of 1,000 second feet with date of priority August 6, 1908, as well as various other water rights through this point of diversion. It therefore appears that the court had decreed to the Secretary of the Interior the amount of water appropriated under the aforesaid permit No. R-369 to the full capacity of the reservoir.

The Department of Reclamation has taken the position that the Idaho Power Company waived and abandoned all rights it might have acquired under its Permit No. R-373 to store water in American Falls reservoir, by entering into the contract with the U. S. Government, copy of which is hereto attached, and that it must now look to the Government for its rights in the premises, and that no

Certificate of Completion of Works can be issued to divert water under Permit No. 10201, for the reason that a Certificate of Completion of Works has already been issued to divert an amount of water in excess of the capacity of the diversion works as now constructed, and that the Department is barred and precluded by the Decree of the Federal Court from granting any right to store water in the American Falls Reservoir, and has requested an opinion as to this situation.

With reference to the contract between the United States of America and the Idaho Power Company, we find the following recital:

"d. Company's Prior Filings at American Falls.

"WHEREAS, the company has at American Falls water filings prior to the American Falls filings of the United States sufficient to embrace the entire amount of water reserved to the company under this contract."

and paragraph four:

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

The Power Company's deed conveys to the United States to an extent particularly set forth, property rights described at paragraph 9,

"(d) All the company's water rights, appropriations, water filings and permits, at American Falls, or used or intended to be used in connection with the company's power plants and proposed plants at American Falls

except the rights, whether primary or tertiary, expressly reserved to the company, as hereinafter set out. The water rights of the company transferred to the United States for use for power purposes shall be considered as impressed with a right in the United States to change the use of such water from power to irrigation or to store the same for irrigation whenever the Secretary of Interior shall decide that such water is required for irrigation purposes. But it is expressly agreed that the company shall have are reserved out of its existing appropriations and rights as independent rights under its own filings and appropriations and of the dates of priority to which the company is entitled under such appropriations and are not to be considered as mere contract rights under contract with the United States.

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

--Paragraph 9, Section (a) and (c), line 847, page 11.

"It is agreed that in addition to the primary right reserved in Paragraph 10, the company reserves and shall have the right * * * to 300,000 acre feet of water flowing into the reservoir after October 1st * * * and actually storable therein, * * * ."

--Paragraph 10, line 467, page 10.

"In complying with the laws of Idaho relating to perfecting water filings made by either party at American Falls both parties shall cooperate so that to the extent permitted by statute and the administrative officers having jurisdiction, the construction of works and use by either party shall apply to proof on the permit of the earliest priority of the class on which such proof can be made."

--Paragraph 57, line 838, page 34.

SUMMARY

CONFLICTING RESERVOIR PERMITS.

From the foregoing statement of facts as we understand them, we find the following situation. The reservoir permit issued to the Bureau of Reclamation and the reservoir permit secured by the Idaho Power Company, while of different dates as to priority, clearly contemplated the same construction work and we believe in this connection that the reservoir permit and the companion water permit should be considered together as one and the same proceeding so far as the appropriation of water is concerned. This situation is conceded by the applicant, the Idaho Power Company, in their brief submitted to the Commissioner of Reclamation, at page 10, in which it is said referring to the reservoir permit of the Government and that of the Power Company:

> "The engineers of the Idaho Power Company have given us a map showing the comparative location of the dam to be constructed under the Idaho Power Company's permit and that of the Government, and the Idaho Power Company's dam is located a very short distance, less than 100 feet, above the location of the Government dam. The immense size of both these dams, of course, excludes the notion that there would be two dams erected. Either the Power Company would erect its dam, which would be about 84 feet high, 8000 feet long at the top and 8950 feet at the bottom, or the Government would erect its dam, which is referred to as 100 feet in height, length 5750 feet at the top and 800 feet at the bottom. There was neither room nor necessity for both as located."

GOVERNMENT PERMITS

We find now that the Government has completed its work under its reservoir and companion water permit, has submitted proof of such completion and has gone further and in

Woodville Decree has secured an adjudication of the water rights acquired under these companion permits, apparently, such decree granting to it a storage right of appropriation to the full capacity of its irrigation works.

POWER COMPANY PERMIT

We find that the Power Company is now requesting a certificate of completion of works under its permit claiming or offering proof of a storage right of 500,000 acre-feet in the American Falls Reservoir, basing its right to a certificate of completion of works, as we understand, wholly upon the basis of its contract with the United States and offers no proof of completion of works independently of but claiming a benefit of the construction works and reservoir of the United States Government. As between the two, there is this distinction which probably might have some consideration. Under the permit of the Power Company they were acquiring a permit for the appropriation of water exclusively for power purposes. The Government permit covered both reclamation and power purposes. It seems hard to believe that the Government intended that any particular portion of its storage rights should be devoted exclusively to power purposes. This may or may not be of benefit insofar as the rights of the respective parties are concerned. However, this condition might be conceived of viewing the situation alone from the standpoint of priorities, since the permit of the Power Company was prior in time, we might imagine a time and such circumstances under which as between the power rights and the Government and the power rights of the power company, the power permit of the company if perfected, might make it possible to secure water for power purposes under the Power permit of the company when such water would not be available under the permit of the Government owing to

its later priority. We are not, however, informed as to whether such a situation could possibly arise. Again paragraph 37 of the contract between the Company and the United States, in which it is recited that "the construction works and use by either party shall apply to proof on the permit of the earliest priority," clearly suggests and it seems to me that the Government might have submitted proof under the permit to the Power Company and have secured a certificate of completion of works if it desired to rely on such permit or intended that the construction work of the Government should apply on such permit.

We can come to no other conclusion except that to apply the construction work of the Government under all of the circumstances in this case insofar as the facts are available to us as proof of completion of works under the power permit, would be to pivot two permits at the same time upon identical work within the rule laid down by Oyster v. Hazzard, 30 Idaho 680, 829 Pac. 1110, which is stated as follows:

> "It is obvious that respondent has sought to support Permit No. 10415 with the work stripped from Permit No. 7050. It is true that after the application of the work to Permit No. 10415 he secured an extension of time under Permit No. 7050, but it is impossible to pivot two permits at the same time upon identical work. Each must stand upon separate or additional construction. Otherwise, compliance with the terms of one permit would work a fictitious compliance with the other."

A similar situation, it seems to us would arise should even the Government now seek as assignee of the Power Company permit to secure a certificate of completion of works under the Power Company permit presumably on account of the earlier priority shown by such permit.

9-LW

It is conceivable that if the diversion works of the power company were sufficient in capacity they might be entitled to a certificate of completion of works under their water permit, that is, a right to divert the natural flow of the stream independent of any reservoir right. However, it appears that other permits have been granted and certificate of completion of works issued under such other permits prior to this time to the full capacity of such diversion works when considered independent of reservoir rights. We deem it unnecessary insofar as the state department is concerned, to go into all of the many details shown in the voluminous contract between the United States Government and the Idaho Power Company, for the reason that many of such details are immaterial to a solution of the questions at hand.

We are familiar with the rule suggested in the above case of Hyatt v. Hazzard, under which work on one permit may be applied on relation to another permit, believing, however, that such rule has no application here. We do not believe any decree of the Federal court or any other court in any way bars the action of the Commissioner, particularly, as the Commissioner was not a party to any such action and any certificate of completion of works that might be issued by the Commissioner is not and cannot be construed as the awarding of a water right. A permit is not a water right or the awarding of a water right and the acts of the Commissioner one way or the other is not barred by any court decree insofar as we are informed.

We are only attempting in this opinion to apply the facts insofar as they have been submitted to us under the letter of the Commissioner under date of January 4, 1933, and to apply those facts to the law of the State of Idaho.

We are, therefore, of the opinion that upon the facts submitted to us in this case, that to apply the work of the Federal Government in the construction of the American Falls Reservoir upon the permit in question of the Idaho Power Company, would in effect pivot two permits at the same time upon identical work and that such work should not be applied upon the permit in question for the reason that each must stand upon separate or additional construction, otherwise compliance with the terms of one permit would work a fictitious compliance with the other and such proof of completion of works is insufficient to authorize the issuance of a certificate of completion of works by the Department.

We are also of the opinion that there is no decision of any Federal Court which might control the action of the Commissioner in the premises.

Respectfully submitted,

LEO M. BRESNAHAN

LMB/d

February 10, 1933.

Exhibit I

OFFICERS:
R. E. SHEPHERD, PRESIDENT
A. F. McCLOUD, VICE-PRESIDENT
J. H. BARKER, SECRETARY
W. H. SPENCE, TREASURER

OFFICE OF THE PRESIDENT
JEROME, IDAHO

American Falls Reservoir District

DIRECTORS:
R. E. SHEPHERD — A. F. McCLOUD
F. E. SAYRE — W. H. SPENCE
J. H. BARKER — H. K. WILEY
A. A. DAVIS

AF

May 7, 1931.

Hon. R. W. Faris,
Commissioner of Reclamation,
State Capitol,
Boise, Idaho.

Dear Mr. Faris:

I notice in this issue of the "North Side News" is the publication of notice of completion of works under Permit No. 15201, granted to the Idaho Power Company, for the use of 1200 second feet of water diverted from American Falls Reservoir.

I am at a loss to understand what this can be, as the rights of the Idaho Power Company in the American Falls Reservoir are all defined under contract between the Power Company and the United States Bureau of Reclamation.

Will you kindly advise me what is involved in this Permit? If it is not too much trouble I should like to have a copy of it.

Yours truly,

R E Shepherd

RES-K

R.E.Shepherd,
President.

15201

01 - 3041

Exhibit J

COPY

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

September 29, 1932

Re: PERMITS No. 15201 and No. R-273

IDAHO POWER COMPANY,
Boise,
I d a h o

Attention Mr. R. G. Rigsted, Special Agent

Gentlemen:

Reference is had to recent conferences in re proof of completion of works under the above mentioned permits. From the records of this Department it appears that under date of March 17, 1921, Idaho Power Company made application No. 21478 to divert 1200 second feet of water from American Falls reservoir, a tributary of Snake River, for power purposes, describing the places of intended use, which, for convenience, are referred to as:

1. American Falls
2. Twin Falls
3. Shoshone Falls
4. Auger Falls
5. Upper Salmon Falls
6. Lower Salmon Falls
7. Swan Falls

Under date of June 21, 1921, Permit No. 15201 was issued to the applicant, with date of priority of March 17, 1921. The time fixed for completion of works under the above mentioned permit was June 21, 1926. Under date of September 20, 1925, time for completion of works was extended to June 21, 1931. On June 20, 1931, proof of completion of works under the above permit was submitted to this Department.

Question 7 of the Deposition of the Permit Holder reads as follows:

> "If the works of diversion do not comply with all the terms of your permit, state fully those particulars in which there is any variance."

R-273

in response to which the permit holder answered:

"The works under Idaho Power Company Permit No. 13947 and its successors, Nos. 16733 and 17070, all at Twin Falls, have not been constructed because right-of-way upon Federal lands, for which application is on file with Federal Power Commission, has not yet been secured. Permit No. 14909, at Twin Falls, has been relinquished to State of Idaho.

"The works under Permit No. 13948 and its successors, Nos. 16734 and 17069, at Upper Salmon Falls, have not been completed but construction work is now in progress."

Question 8 of the Deposition of the Permit Holder reads as follows:

"Give description of works, state dimensions and capacity of each part, and give cost of same."

in response to which the permit holder answered:

"American Falls Reservoir Dam as constructed by U. S. Bureau of Reclamation; and as described in Idaho Power Company Water Permits Nos. 4189, 14077 and 16436 at American Falls; No. 14803 at Shoshone Falls, No. 3685 at Lower Salmon Falls, and No. 14758 at Twin Falls."

with no description of the works, statement of dimensions and capacity, or cost.

From the foregoing it appears that no claim is made for any development at Twin Falls or Upper Salmon Falls.

From an engineering examination and test, the capacity of the diversion works at American Falls was found to be 8340 cubic feet per second.

An examination of the records of this Department discloses that a license for 1,000 cubic feet per second was issued under date of December 10, 1925, under Permit No. 14881, for diversion and use at Shoshone Falls.

Under date of October 31, 1919, a license for 3,000 cubic feet per second was issued under Permit No. 3685, for diversion and use at Lower Salmon Falls.

Under date of May 26, 1920, a license for 4,000 cubic feet per second was issued under Permit No. 14368, for diversion and use at Twin Falls.

R A C

in response to which the permit holder answered:

> "The works under Idaho Power Company Permit No. 13947 and its successors, Nos. 16733 and 17070, all at Twin Falls, have not been constructed because right-of-way upon Federal lands, for which application is on file with Federal Power Commission, has not yet been secured. Permit No. 14909, at Twin Falls, has been relinquished to State of Idaho.
>
> "The works under Permit No. 13948 and its successors, Nos. 16734 and 17069, at Upper Salmon Falls, have not been completed but construction work is now in progress."

Question 8 of the Deposition of the Permit Holder reads as follows:

> "Give description of works, state dimensions and capacity of each part, and give cost of same."

in response to which the permit holder answered:

> "American Falls Reservoir Dam as constructed by U. S. Bureau of Reclamation; and as described in Idaho Power Company Water Permits Nos. 4168, 14087 and 16635 at American Falls, No. 14881 at Shoshone Falls, No. 3665 at Lower Salmon Falls, and No. 14562 at Swan Falls."

with no description of the works, statement of dimensions and capacity, or cost.

From the foregoing it appears that no claim is made for any development at Twin Falls or Upper Salmon Falls.

From an engineering examination and test, the capacity of the diversion works at American Falls was found to be 8240 cubic feet per second.

An examination of the records of this Department discloses that a license for 1,000 cubic feet per second was issued under date of December 10, 1925, under Permit No. 14881, for diversion and use at Shoshone Falls.

Under date of October 31, 1919, a license for 3,000 cubic feet per second was issued under Permit No. 3665, for diversion and use at Lower Salmon Falls.

Under date of May 26, 1920, a license for 4,000 cubic feet per second was issued under Permit No. 14562, for diversion and use at Swan Falls.

R.273

Said above and foregoing amounts of water to be diverted having been found to be the amounts the works at the several points above mentioned were capable of diverting at that time.

It is not shown or contended, as we understand it, that any additional work has been done at either of the above mentioned plants since the issuance of the licenses as hereinabove set out.

Under date of October 15, 1926, long subsequent to the issuance of Permit No. 15201, Idaho Power Company made application No. 23479 for permit to divert 2,000 cubic feet per second of the waters of Snake River, for power purposes, to be used at its then existing East Side Plant at American Falls, which is the same site covered by Permit No. 15201, which application was approved by the State Commissioner of Reclamation January 18, 1927, and Permit No. 16655 issued to applicant, work thereunder to be completed on or before July 18, 1927.

Under date of July 18, 1927, proof of completion of works under the above mentioned permit was submitted, and on October 7, 1927, Certificate of Completion of Works was issued, as follows:

"Permit No. 16655
Certificate of Completion of Works

To all whom it may concern:
This is to certify that Idaho Power Company of Boise, County of Ada, and State of Idaho, the holder of Permit No. 16655, issued upon Application No. 23479, bearing date of priority of October 15, 1926, authorizing the diversion of 2,000 second feet of the waters of Snake River, County of Power, State of Idaho, for power purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use 2,000 second feet of the waters of Snake River, or so much thereof as, together with the amounts diverted and conveyed to place of intended use by rights heretofore granted under Permits Nos. 4168 and 14067, shall make a total of 9,000 second feet, or the present capacity of the diversion works of the Company; that the point of diversion of said waters is N. 69° 30' W., approximately 1872.3 feet from the southeast corner of Section 30, Township 7 South, Range 31 East of Boise Meridian, being the Company's dam

R-273

at American Falls; and that the place of intended use of said water is at the Company's existing East Side plant, in the NE¼ of NE¼, Section 31, Township 7 South, Range 31 East of Boise Meridian."

Since no work has been done at Shoshone Falls, Lower Salmon Falls or Swan Falls, under Permit No. 15201, it is obvious that no Certificate of Completion of Works can be issued for these developments; and since the permit holder already holds a Certificate of Completion of Works at American Falls for an amount of water in excess of the capacity of the works, found by examination and test, it would seem that the issuance of another Certificate under Permit No. 15201 would be superfluous and a futile gesture which would only serve to complicate the situation and cumber the records of this Department with no benefit to anyone.

Under date of March 17, 1921, Idaho Power Company made application No. R-11475 for permit to store 300,000 acre feet of water in American Falls reservoir, for power purposes, which application was approved June 28, 1921, and Permit No. R-273 issued thereunder.

Under the head of "Remarks" the application contains the following:

"The water stored in accordance with this permit will be conducted through the Snake River and the works constructed under the terms of the following appropriations and permits to the points of use as therein set forth, and in each instance returned to Snake River as therein stated:" (Here follows a list of 15 locations to which water is proposed to be returned to Snake River).

Extension of time for completion of works under Permit No. R-273 was extended to June 21, 1931.

On June 20, 1931, proof of completion of works under Permit No. R-273 was submitted.

Question 7 of the Deposition of the Permit Holder reads as follows:

"If the works of diversion do not comply with all the terms of your permit, state fully those particulars in which there is any variance."

in response to which the permit holder answered:

R-273

#5

Idaho Power Company 9/29/32

"Dam was constructed by and on plans of U. S. Bureau of Reclamation on larger scale than contemplated under Permit No. R-273, and reservoir capacity was made greater, in accordance with Agreement, June 15, 1923, between United States of America and Idaho Power Company, a copy of which Agreement is on file with Department of Reclamation of the State of Idaho."

Question 8 of the Deposition of the Permit Holder reads as follows:

"Give description of works, state dimensions and capacity of each part, and give cost of same."

in response to which the permit holder answered:

"American Falls Dam and Reservoir, as constructed by United States Bureau of Reclamation; and as applicable to and under Idaho Power Company Water Permits Nos. 4168, 14067 and 16636 at American Falls."

Under paragraph 4 of what is known as the "Woodville Decree," dated June 25, 1929, all storage rights in the American Falls reservoir are adjudicated and decreed to the United States.

Under date of May 16, 1931, the United States submitted proof of completion of works of the American Falls reservoir dam, under its Permit No. R-269, which was approved and Certificate of Completion of Works was issued for 1,800,000 acre feet, being the full capacity of the reservoir.

It is the understanding of this Department that all rights of the Idaho Power Company to store water in American Falls reservoir are set out, determined and concluded in the agreement between the Power Company and the United States, dated June 15, 1923, referred to in the applicant's proof of completion of works under Permit No. R-273, so that a Certificate of Completion of Works under such permit by this Department would be a nullity and would only serve to further complicate the situation.

From the foregoing, it seems that proof of completion of works under both Permit No. 15801 and Permit No. R-273 must be rejected. However, before entering such an order, we would appreciate any further suggestions you may have to make with reference to the matter.

Very truly yours,

RHF/mt

Commissioner of Reclamation

R-273

Exhibit K

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
H. W. FARIS, COMMISSIONER
BOISE

C. BEN ROSS, GOVERNOR

BUREAU OF WATER RESOURCES
MARK H. COFFIN
DIRECTOR
ASSISTANT COMMISSIONER

December 31, 1932

IDAHO POWER COMPANY,
Boise,
I d a h o

Re: Permits No. 15201 and R-273

Attention E. C. KIERSTED, Special Agent

Gentlemen:

On June 20, 1931, you submitted to this Department proof of completion of works under the above mentioned permits. After careful consideration I advised you, under date of September 29, 1932, that for various reasons I felt that proof of completion of works under these permits would have to be rejected, but the matter was left open for any further showing you might feel like making. Various representations, suggestions and arguments have been presented, none of which has had the effect of changing my mind with reference to the matter. Among the reasons leading to the conclusion arrived at were, that it was not shown that any work had been done under these permits; that you already had a certificate of completion of diversion works with a capacity in excess of the actual capacity disclosed by the engineer's examination at the time these proofs were made and that to issue a certificate of completion of works under these permits would be to pivot one permit upon another, which I do not think is permissible under the law as construed by the Supreme Court in the Syster case. But the main reason was that prior to the time proof of completion of work was offered the United States Court, in what is known as the "Woodville Decree," adjudicated and decreed to the United States all the storage capacity of the American Falls reservoir.

You now request permission to withdraw proof under Permit No. 15201, which is the permit to appropriate water, and that a certificate of completion of works under Permit No. R-273 be issued in the regular form, but with the following additional qualifications and reservations:

> "That the right to store the waters under this permit is to be construed in relation to and in connection with Permit No. R-269 in the name of United States of America, bearing date of priority as of March 30, 1921, upon which permit certification of completion of reservoir and the right to store water was issued on July 12, 1932, and the right granted herein to store water is not in addition to the right to store water under said permit but is a part thereof."

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Under such a situation, as I view it, you will have abandoned all claim of right under Permit No. 15201, and will find yourself confronted with the rule laid down by the Federal Court in the case of Quigg Irrigation Co., et al, vs. Dietz, et al, entered December 10, 1923, in which the Court said, in part, referring to a reservoir permit:

> " ** it still remains true that to be qualified to maintain a suit of this character a party must be the holder of a permit to appropriate water. ** permits are granted to construct reservoirs, but if in connection therewith it is desired also to appropriate water a distinct application must be made and a separate permit secured. Where two applications are made and two permits issued, there is a cross-reference from one to the other showing that <u>both relate to and cover the same general project</u>. Here the plaintiffs hold only a permit to construct a reservoir. They have no water appropriation permit, and therefore they are not qualified to maintain an action, etc.
>
> " ** There being no statutory authority for a reservoir permit, it follows that there is no statutory provision for contesting it."

As I understand it, this decision, applied to your case, would leave you nothing upon which to predicate a certificate of completion of works.

Without assuming to pass upon any legal question involved, I still think that Idaho Power Company must rely upon its contract with the United States, referred to in its proof of completion of works, for its right to store water in American Falls reservoir.

In view of the foregoing, I feel that proof of completion of works must be denied.

Very truly yours,

R. J. Newell

Commissioner of Reclamation

RWF/mt

C1-2065
P-413

Exhibit L

IDAHO POWER COMPANY

BOISE, IDAHO

OFFICE OF DISTRICT COUNSEL
U. S. RECLAMATION SERVICE,
PORTLAND, OREGON.
APR 27 1932
RECEIVED.

April 25, 1932.

Mr. B. E. Stoutemyer, Dist. Counsel,
U. S. Bureau of Reclamation,
603 Postoffice Building,
Portland, Oregon.

Dear Mr. Stoutemyer:

This letter is written pursuant to our understanding arising out of the conference at Denver, Colorado, on April 16, 1932, participated in by you, Dr. Mead, Messrs. Dent and Debler and myself. I herein set forth at length the clauses agreed to by us all as satisfactory for insertion in the license for which application is now pending before the Federal Power Commission covering Idaho Power Company's Twin Falls power site on Snake River, in Idaho. Those clauses are as follows:

"As a condition of this license, the licensee, for itself, and its successors and assigns, hereby stipulates and agrees that all rights to the use of water for power purposes heretofore or hereafter acquired for the development of power at the site of this project shall be held and considered at all times to be subject, inferior and subordinate to all rights heretofore or hereafter acquired by the United States or other parties for irrigation purposes, except (a) the right to use for power development at this project the water from the 45,000 acre feet of primary storage capacity which the licensee holds in American Falls reservoir under paragraph 16 of that certain contract between the United States of America and Idaho Power Company, dated June 16, 1923, and the discharge of which it may control under the terms of said contract; (b) the right to use for power development at this project the seepage, percolating, drainage, spring or springs, waste, and/or other influent waters which do not flow or spill over Milner Dam but which enter in, arise in, and flow in and along the channel of Snake River between the downstream toe of Milner Dam, in Snake River, Idaho, and the site of the project covered by this license. Licensee further agrees, for itself, its successors and assigns, to forego any and all claims which it might otherwise have for damages or other relief in connection with any power rights at the site of this project other than those mentioned in (a) and (b) above and which are necessary for irrigation purposes, and it is mutually agreed by the parties hereto that this license neither expressly nor impliedly has modified, relinquished, abandoned or surrendered, nor does hereby modify, relinquish, abandon or surrender any of the licensee's rights and privileges

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under said contract of June 15, 1923, nor any of its rights and privileges heretofore or hereafter acquired to the use of water or waters for power purposes at any other point or points.

"This stipulation and agreement shall be considered as a covenant running with the title to the said power plant at Twin Falls and all rights in connection therewith, and the licensee agrees to execute and acknowledge, under authority of a suitable resolution of its board of directors, a recordable contract or deed embodying the provisions, conditions and limitations set out in the foregoing stipulation and agreement so that the same may be recorded in the counties in which said power sites are located.

"This stipulation shall be effective to bind the licensee and its successors and assigns, without signature or execution by or on behalf of the United States, and shall become effective for such purpose upon the granting of the foregoing application or the issuance of a license thereunder."

Very truly yours,

James L. Boone

James L. Boone,
Attorney.

JLB/B

Exhibit M

11-32—a

THE FEDERAL POWER COMMISSION

LICENSE ON GOVERNMENT LANDS

Project No. [redacted]
[redacted]

[redacted]

WHEREAS, by Act of Congress, approved June 10, 1920 (41 Stat., 1063) designated therein as "The Federal Water Power Act" and hereinafter called "the Act," the Federal Power Commission, hereinafter called "the Commission," is authorized and empowered, inter alia, to issue licenses for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development, transmission and utilization of power across, along, from or in any of the navigable waters of the United States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam; and

WHEREAS, [redacted], hereinafter called "the Licensee," [redacted] organized and existing under the laws of the State of [redacted] and having [redacted] office and principal place of business in the city of [redacted], in the State of [redacted], has, pursuant to the provisions of a preliminary permit issued on the [redacted] day of April 1924, [redacted]

made application in due and proper form to the Commission for a license for a power project designated as Project No. [redacted] on the records of the Commission, and for authority to construct, maintain and operate, [redacted] Falls Snake River at Twin [redacted], in the vicinity of Jerome and Twin Falls, in the counties of Jerome and Twin Falls, State of Idaho, [redacted] certain project works, as hereinafter described, necessary or convenient for the development, transmission and utilization of power, and to occupy and use therefor certain lands of the United States, as hereinafter described together with all riparian rights appurtenant thereto which are necessary or useful for the purposes of the project; and

WHEREAS, the Licensee has submitted to the Commission satisfactory evidence of [redacted] compliance with the laws of the State of Idaho, as required by Section 9, subsection (b) of the Act, and the Commission is satisfied as to the ability of the Licensee to carry out the plans for said project as filed with said application; and

WHEREAS, notice of said application has been given and published by the Commission, as required by Section 4 of the Act; full opportunity has been given to all interested parties to be heard, and no application for said project, or in conflict therewith, has been filed by any State or municipality; and

WHEREAS, the maps, plans and specifications of said project and of said project works, as hereinafter described, have been approved by the Commission, and the Commission has found that said project, as hereinafter described, will be best adapted to a comprehensive scheme of improvement and utilization for the purposes of water-power development and of other beneficial public uses, and that the license will not interfere or be inconsistent with the purpose for which any reservation affected thereby was created or acquired; and

WHEREAS, the Commission, by order adopted at its meeting of September 16, 1933, waived Proviso No. 27, with respect to said project, and, therefore, the determination of the preliminary work thereof will not be required prior to the issuance of a license; and - - - - - - - - - - - - - -

WHEREAS, the Licensee, on the 12th day of May, 1934, pursuant to an authorization of its board of directors, a copy of the record thereof being hereto attached, accepted in writing all the terms and conditions of the Act and of this license;

NOW, THEREFORE, the Commission hereby issues this license to the Licensee for the purpose of constructing, operating and maintaining upon the lands of the United States hereinafter designated and described, certain project works necessary or convenient for the development, transmission and utilization of power and constituting a part of the project hereinafter described, and of authorizing in connection with and as a part of said project the occupancy and/or use by the Licensee of said lands of the United States and of all riparian rights appurtenant thereto which are necessary or useful for the purposes of the project; said license, including the period thereof, being subject to all the terms and conditions of the Act and of the rules and regulations of the Commission pursuant thereto as amended and made effective on the 23rd day of June, 1930, as though fully set forth herein, which said rules and regulations are attached hereto and made a part hereof, and being subject also to the following express conditions and limitations, to wit:

Article 1. This license is issued for a period of fifty (50) years from the date hereof, and in consideration of such license and the benefits and advantages accruing thereunder to the Licensee it is expressly agreed by the Licensee that the entire project, project area and project works as hereinafter designated and described, whether or not upon lands of the United States, shall be subject to all the terms and conditions of this license, including the terms and conditions of the Act and of the rules and regulations of the Commission pursuant thereto and made a part of this license.

Article 2. The project covered by and subject to this license is located partly on lands of the United States, - - - - - - - - - - - - - - and consists of—

A. All lands constituting the project area and inclosed, or the location of which is shown, by the project boundary, and/or interests in such lands necessary or useful for the purposes of the project, whether such lands or interests therein are owned or held by the Licensee or by the United States; such project area and project boundary being more fully shown and described by certain exhibits which accompanied said application for license and which are designated and described as follows:

Exhibit J: Sheet 1, map designated "General Map of Entire Project" (F.P.C. No. 15-30);

Exhibit K: Sheet 3, map designated "General Plan of Development (F.P.C. No. 15-25);

B. All water rights which are more fully described in a certain exhibit, which accompanied said application for license, and which is designated and described as follows:

Exhibit E: One typewritten sheet entitled "Statement of the nature, extent, and ownership of water rights," signed Idaho Power Company by H. L. Hibbard, Vice-President and General Manager, and received in the office of the Federal Power Commission with the application for license on June 21, 1930.

C. All project works consisting of a reinforced concrete dam, a penstock, a power house, and appurtenant works, the location, nature, and character of which are more fully shown and described by certain exhibits which accompanied said application for license and which are designated and described as follows:

Exhibits A and B: cited above.

Exhibit C: Plans, in 3 sheets, designated:
"Plan of Power House, Intake, and South Channel Dam" (F.P.C. No. 18-13);

"Dam - Profile and Section" (F.P.C. No. 18-15;

"Power House Plan and Section through Power House, Penstock, and Intake" (F.P.C. No. 18-16);

Exhibit D: Two typewritten sheets designated "Description of Mechanical, Electrical, and Transmission Equipment," signed Tribe Power Company by H. L. Hibbard, Vice-President and General Manager.

D. All other structures, fixtures, equipment, or facilities used or useful in the maintenance and operation of the project, whether owned by the Licensee or by the United States, and located upon the project area, including such portable property as may be used and useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project works is approved or acquiesced in by the Commission; also all other rights, easements, or interests, including said riparian rights, the ownership, use, occupancy or possession of which is necessary or appropriate in the maintenance and operation of the project or appurtenant to the project area.

Article 3. The maps, plans, specifications, and statements designated and described in Article 2 hereof as Exhibits J, K, L, L and M respectively, and approved ~~by the Executive Secretary for the Commission~~ in the Grantee's accordance with ~~its~~ authorization of December 22, 1933, are hereby made a part of this license, and no substantial change shall hereafter be made in said exhibits, or any of them, until such change shall have been approved by the Commission: Provided, however, that if the Licensee deems it necessary or desirable that said approved maps, plans, specifications and statements, or any of them, be changed there shall be submitted to the Commission for approval amended, supplemental, or additional maps, plans, specifications and statements covering the proposed changes, and upon approval by the Commission of such proposed changes such amended, supplemental or additional maps, plans, specifications and statements shall become a part of this license and shall supersede, in whole or in part, such map, plan, specification, or statement, or part thereof, theretofore made a part of this license as may be specified, respectively, in the order or endorsement of approval.

Article 4. Said project works shall be constructed in substantial conformity with the approved maps, plans and specifications thereof made a part of this license and designated and described in Articles 2 and 3 hereof or as changed in accordance with the provisions of said Article 3. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works constructed under this license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission shall direct. Minor changes in or divergence from such approved maps, plans, and specifications may be made in the course of construction, if such changes will not resul. in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any such minor changes made without the prior approval of the Commission which in its judgment have produced or will produce any of such results shall be subject to such alteration as the Commission may direct.

Article 5. The work of construction under this license, whether or not conducted upon lands of the United States, shall be subject to the inspection and approval of the District Engineer, U.S. Geological Survey, Boise, Idaho or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall notify such representative of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of construction for a period of more than one week, and of its resumption and completion.

Article 6. Subject to the provisions of Section 13 of the Act, the Licensee shall begin the construction of the project works on or before May 1, 1935, and shall thereafter in good faith and with due diligence prosecute such construction; and shall on or before November 30, 1937, complete the initial installation with dam crest to elevation 5,307 feet above sea level, and shall complete the dam to a crest elevation of 5,320 feet at such time as the Commission may direct.

Article 7. Upon the completion of the project works, or at such other time as the Commission may direct, the Licensee shall submit to the Commisson for approval revised maps, plans, specifications, and statements, in so far as necessary to show any divergence from or variations in the project area as finally located or in the project works as constructed when compared with the area shown and the works designated or described in this license or in the maps, plans, specifications, and statements approved by the Commission under the provisions of Article 3 hereof, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variations in or divergence from the approved maps, plans, specifications, and statements. Such revised maps, plans, specifications, and statements shall, if and when approved by the Commission, be made a part of this license and shall, to the extent and in the particulars set forth in the order or endorsement of approval, be substituted for the maps, plans, specifications and statements theretofore approved by the Commission under the provisions of Article 3 hereof. The maps finally approved by the Commission and made a part of this license under the provisions of Article 3 and/or 7 hereof shall show the project area to an adequate scale and the boundary thereof either by legal subdivisions, by metes and bounds survey, or by uniform offsets from centerline survey. Said project area shall include all lands without respect to ownership and whether or not the exact boundaries can be definitely fixed and determined, the use and occupancy of which are or will be valuable or serviceable in the maintenance and operation of the project; on which are located or to which are appurtenant the project works (other than portable property) and the rights, easements, or interests likewise valuable and serviceable; and the ownership or possession, or the right of use and occupancy, of which are subject to acquisition by the United States under the provisions of Section 14 of the Act. Said maps shall show the ownership of each parcel of land in said project area, and with respect to each parcel to which the Licensee has not the fee title, the character of the right of use and occupancy possessed by the Licensee together with the term of such right.

Article 8. For the purpose of determining the stage and flow of the stream or streams from which water is to be diverted for the operation of said project works and of the amount of water held in and drawn from storage, the Licensee shall install a substantial staff gage in the pool, and a standard gaging station equipped with a recording gage below the plant, and

shall provide for the required readings of such gages and for the adequate rating of said station or stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters or other measuring devices, and the method of operation thereof may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or its authorized representative or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of the District Engineer of the U. S. Geological Survey having charge of stream gaging operations in the region of said project, and the Licensee shall reimburse the said United States Geological Survey for such part of the cost of such supervision as may be equitably determined by the said Survey to be reasonable and proper in order to carry out the purposes of this license. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, shall make return of such records annually, at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall be liable for all damages occasioned to the property of others by the construction, maintenance or operation of said project works, or of the works appurtenant or accessory thereto, and in no event shall the United States be liable therefor.

Article 10. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto constructed under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 11. Timber upon lands of the United States, to be used or destroyed in the construction of the project works, shall be paid for in accordance with the requirements and estimates of the Department concerned.

Article 12. In the construction and maintenance of the project works herein specified, the Licensee shall place and maintain suitable structures to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads.

Article 13. Before beginning construction, the licensee shall prepare and submit plans for the initial section of the dam to an elevation of 3,907 feet, and before raising the crest of the dam above the initial elevation of 3,907 feet, the licensee shall prepare and submit plans for preventing erosion below the downstream toe of the structure and shall secure the approval thereof by the Commission.

Article 14. As a condition of this license, the licensee, for itself, its successors and assigns, hereby stipulates and agrees that all rights to the use of water for power purposes heretofore or hereafter acquired for the development of power at the site of this project shall be held and considered at all times to be subject, inferior, and subordinate to all rights heretofore or hereafter acquired by the United States or other parties for irrigation purposes, except (a) the right to use for power development at this project the water from the 45,000 acre-feet of primary storage capacity which the licensee holds in American Falls Reservoir under paragraph 16 of that certain contract between the United States of America and Idaho Power Company, dated June 15, 1923, and the discharge of which it may control under the terms of said contract, (b) the right to use for power development at this project the seepage, percolation, drainage, spring or springs, waste, and/or other influent waters which do not flow or drift over Milner Dam but which enter in, arise in, and flow in and along the channel of Snake River between the down-stream toe of Milner Dam in Snake River, Idaho, and the site of the project covered by this license. Licensee further agrees, for itself, its successors and assigns, to forego any and all claims which it might otherwise have for damages or other relief, in connection with any power rights at the site of this project, other than those mentioned in (a) and (b) above and which are necessary for irrigation purposes, and it is mutually agreed by the parties hereto that this license neither expressly nor impliedly has modified, relinquished, abandoned, or surrendered, nor does hereby modify, relinquish, abandon, or surrender any of the licensee's rights and privileges under said contract of June 15, 1923, nor any of its rights and privileges heretofore or hereafter acquired to the use of water or waters for power purposes at any other point or points.

This stipulation and agreement shall be considered as a covenant running with the title to the said power plant at Twin Falls, and all rights in connection therewith, and the licensee agrees to execute and acknowledge under authority of a suitable resolution of its board of directors, a recordable contract or deed embodying the provisions, conditions, and limitations set out in the foregoing stipulation and agreement, so that the same may be recorded in the counties in which said power sites are located.

This stipulation shall be effective to bind the licensee and its successors and assigns, without signature or execution by or on behalf of the United States, and shall become effective for such purposes upon the execution of the license.

Article 15. The Licensee shall, before placing any transmission line into operation, make provision satisfactory to the Commission for avoiding inductive interference between such transmission line and any existing telephone line or lines of the United States, or with any such line or lines for which locations have been made and specifications prepared but upon which construction has not begun at the time of erection of said transmission line. Such provisions may be applied either to the transmission line or to the telephone line or to both, as may be determined upon the basis of least cost. The Licensee hereby agrees to consent to such changes in the location or design of any of its transmission lines as may in the opinion of the Commission be necessary or desirable in order to avoid inductive interference with any telephone line or lines of the United States hereafter constructed or proposed to be constructed, provided such changes are made at the expense of the United States.

Article 16. The Licensee shall clear the bottoms and margins of all reservoirs up to high-water level, shall clear and keep clear to an adequate width lands of the United States along open conduits and along transmission lines, and shall dispose to the satisfaction of said representative of the Commission of all temporary structures, brush, refuse, or unused timber on lands of the United States resulting from the clearing of lands or from the construction and maintenance of said project works.

Article 17. The Licensee shall allow officers and employees of the United States free and unrestricted access in, through and across the said project and project works in the performance of their official duties.

Article 18. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure built under the provisions of this license shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of War. Such rules and regulations may include the maintenance and operation by the Licensee at its own expense of such lights and signals as may be directed by the Secretary of War, and such fishways as may be prescribed by the Secretary of Commerce.

Article 19. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of War, as may be necessary for the purposes of navigation and the operations of the Licensee so far as they affect the use, storage, and discharge from storage of waters affected by this license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of War may prescribe in the interests of navigation and as the Federal Power Commission may prescribe in the interests of flood control and of the fullest practicable use of said waters for power purposes.

Article 20. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with said project, the Licensee shall convey to the United States free of cost, such of its lands and its rights of way, and such right of passage through its dam or other structures and permit such control of pools as may be required to complete such navigation facilities.

Article 21. The Licensee shall construct and install such appliances as are necessary for furnishing power for the operation of navigation facilities including lights and signals, whether constructed by the Licensee or by the United States; and shall furnish free of cost to the United States power for the operation of such navigation facilities.

Article 22. Upon the completion of the construction of said project or of each of the separable parts thereof for which dates of completion are specified in Article 6 hereof, or of any addition to or betterment of said project, the Licensee shall file with the Commission a statement under oath in duplicate showing the actual legitimate cost of construction thereof and the price paid for water rights, lands, or interest in lands appurtenant to such construction as required by Regulation 20, Section 2, of said rules and regulations of the Commission. Any such statement shall include all proper and legitimate costs, whether incurred prior to issuance of license or on and after such date; and the Licensee shall, if requested by the Commission, show separately on any such statement, or on a special report or reports, the items and amounts of cost incurred prior to date of issuance of license, with such other details as the Commission may require. Each and every item of cost included in any such statement shall be supported by proper voucher or other evidence; and any such voucher or evidence or certified copy thereof, in support of any item properly includible in said cost shall become a part of the permanent records of said project and shall be kept and retained by the Licensee in the manner required by the Commission. Any statement or report submitted to the Commission under the provisions of this article shall be subject to the provisions of Section 6 of said Regulation 20.

Article 23. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of such reservoir or other improvement for such part of the annual charges for interest, maintenance and depreciation thereon as the Commission may deem equitable. The proportion of such charges to be paid by the Licensee shall be determined from time to time by the Commission. Whenever such reservoir or other improvement is constructed by the United States the Licensee shall pay similar charges into the Treasury of the United States upon bills rendered by the Commission.

Article 24. The Licensee shall pay to the United States reasonable annual charges for the purpose of reimbursing the United States for the costs of the administration of the Act and for recompensing it for the use, occupancy and enjoyment of its lands or other property hereinbefore described. The payment by the Licensee of such annual charges for any calendar year shall be made to the United States at the end of the year, or within thirty days thereafter, upon bills rendered or approved by the Commission. Such charges shall be determined in accordance with the provisions of Regulation 14 of said rules and regulations of the Commission, and for the purposes of such determination the power capacity of the project shall, subject to the provisions of section 3 of said regulation 14, be taken as 7,670 horsepower.

Article 25 After the first twenty years of operation of said project under this license, out of surplus earned thereafter, if any, accumulated in excess of a specified reasonable rate of return upon the actual, legitimate investment of the Licensee in said project, all as defined in and determined by the provisions of regulation 17 of said rules and regulations of the Commission, the Licensee shall establish and maintain amortization reserves, which reserves shall, in the discretion of the Commission, be held until the termination of the license or be applied from time to time in reduction of the net investment. Such specified rate of return shall, subject to the proviso of paragraph A, section 3 of said regulation, be one and one-half (1½) times the weighted average annual interest rate payable on the par value of the bona fide interest-bearing debt of the Licensee actually outstanding, in whole or in part, on account of project property at the beginning of the period of amortization and of each calendar year thereafter; such weighted average annual interest rate being determined as provided in paragraphs B and C of section 3 of said regulation 17: Provided, That, if at the beginning of the period of amortization or of any calendar year thereafter, the outstanding interest-bearing debt of the Licensee on account of the project or projects under license, together with any other works or property operated in connection therewith, is less than 25 per cent of the actual, legitimate investment of the Licensee in said project or projects, then and in such event for the calendar year next following the specified rate of return shall be two (2) times the legal rate of interest in the State in which the project or major part thereof is located.

Subject to the provisions of section 6 of said regulation, the following proportions of such surplus earnings shall be paid into and held in such amortization reserves: Of all surplus earnings up to and including 2 per cent upon the actual, legitimate investment, 30 per cent thereof shall be so paid; of all surplus earnings in excess of 2 per cent and not in excess of 4 per cent upon such investment, 50 per cent thereof shall be so paid; of all surplus earnings in excess of 4 per cent and not in excess of 6 per cent, 70 per cent thereof shall be so paid, and of all surplus earnings in excess of 6 per cent, 90 per cent thereof shall be so paid: Provided, That if at the end of any calendar year of the amortization period the Commission shall find that the accumulated earnings of the Licensee during the period of operation, including the first twenty (20) years thereof, have not yielded a fair return upon the actual, legitimate investment in the project or projects under license, the proportion of such surplus earnings for such calendar year and for succeeding calendar years to be paid into such amortization reserves shall be ten (10) per cent thereof until such time as the accumulated earnings of the Licensee represent, in the judgment of the Commission, a fair return upon such investment for such period of operation.

Article 26 No lease of said project or part thereof whereby the lessee is granted the exclusive occupancy, possession, or use of project works for purposes of generating, transmitting, or distributing power shall be made without the prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of this license, of the Act, and of said rules and regulations of the

Commission shall be applicable to such lease and to such property so leased to the same extent as if the lessee were the Licensee hereunder: Provided, That the provisions of this article shall not apply to parts of the project or project works which may be used by another jointly with the Licensee under a contract or agreement whereby the Licensee retains the occupancy, possession, and control of the property so used and receives adequate consideration for such joint use, or to leases of land while not required for purposes of generating, transmitting, or distributing power, or to buildings or other property not built or used for said purposes, or to minor parts of the project or project works the leasing of which will not interfere with the usefulness or efficiont operation of the project by the Licensee for said purposes.

Article 27. It is hereby understood and agreed that the Licensee, its ~~(his)~~ successors and assigns will, during the period of this license, retain the possession of all project property covered by this license as issued or as hereafter amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and that none of such properties valuable and serviceable to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission: Provided, That a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. The Licensee further agrees, on behalf of itself ~~(himself)~~, its ~~(his)~~ successors and assigns, that, in the event said project is taken over by the United States upon the termination of this license, as provided in Section 14 of the Act, or is transferred to a new Licensee under the provisions of Section 15 of the Act, it ~~(he)~~ will be responsible for and will make good any defect of title to or of right of user in any such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge or will assume responsibility for payment and discharge of all liens or incumbrances upon said project or project property created by said Licensee or created or incurred after the issuance of this license: Provided, That the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to require the Licensee for the purpose of transferring the project to the United States or to a new Licensee to acquire any different title or right of user in any such project property than was necessary to acquire for its ~~(his)~~ own purposes as Licensee.

Article 28. The Licensee shall abide by such reasonable regulation of the services to be rendered to customers or consumers of power, and of rates and charges of payment therefor, as may from time to time be prescribed by any duly constituted agency of the State in which the service is

rendered or the rate charged; and in case of the development, transmission, distribution, sale or use of power in public service by the Licensee or by its customers engaged in public service within a State which has not authorized and empowered a commission or other agency or agencies within said State to regulate and control the services to be rendered by the Licensee or by its customers engaged in public service, or the rates and charges of payment therefor, or the amount or character of securities to be issued by any of said parties, it is agreed as a condition of this license that jurisdiction is hereby conferred upon the Commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control: Provided, That the jurisdiction of the Commission shall cease and determine as to each specific matter of regulation and control prescribed in this Article as soon as the State shall have provided a commission or other authority for the regulation and control of that specific matter.

Article 29. With the written consent of the Licensee, the Commission may by order made under its seal, and after the public notice required by Section 6 of the Act, modify, alter, enlarge or omit, in so far as authorized by law, any one or more of the conditions or provisions of this license.

Article 30. The enumeration herein of any rights reserved to the United States or to any State or municipality under the Act, or of any requirement of the Act or of said rules and regulations of the Commission shall not be construed in any degree as impairing any other rights so reserved by the Act or as limiting the force of any other requirement of said Act or of said regulations.

IN WITNESS WHEREOF, the Federal Power Commission has caused its name and seal to be hereto signed and affixed by ~~its~~ Frank R. McNinch, its Chairman, this 11th day of June 1934, pursuant to an order of the Commission issued December 22, 1933, and amended April 24, 1934.

FEDERAL POWER COMMISSION

By Frank R. McNinch

~~Chairman.~~

Executive Secretary.

Attest:

Leon M. Fuquay

Acting Secretary.

11-32—n

IN TESTIMONY OF ACCEPTANCE of all the terms and conditions of the Federal water power act of June 10, 1920, and of the further conditions imposed in the foregoing license, the Licensee, this 12th day of May, 1934, has caused its name and corporate seal to be hereto signed and affixed by K. M. Robinson, its President, pursuant to a resolution of its board of directors, passed on the 11th day of May, 1934, a certified copy of the record thereof being hereto attached.

IDAHO POWER COMPANY

By K. M. Robinson
President

Attest:

James L. Boone
Secretary.

FPC FORM
1-11-34

Executed in triplicate.

Exhibit N

Symbol IIr-801

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Reclamation

SNAKE RIVER VALLEY PROJECTS
and
OWYHEE PROJECT

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

THIS AGREEMENT, Made this 1st day of October, 1934, in pursuance of the act of Congress of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, between the UNITED STATES OF AMERICA, hereinafter styled the United States, acting for this purpose by T. A. Walters, First Assistant Secretary of the Interior, and IDAHO POWER COMPANY, a corporation organized under the laws of the State of Maine but authorized to do business in the State of Idaho and having its principal place of business therein at Boise, Idaho, hereinafter styled the Company, its successors and assigns.

WITNESSETH, That:

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

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

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

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

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

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

WHEREAS, the Company has proposed to furnish power from its

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

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

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

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

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

A 1. The Company shall be permitted to use for power at American Falls during the period of this agreement any water in

addition to its own released from American Falls reservoir.

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

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

with no further requirement for the release of said water over Milner Dam between March 16th and June 10th incl., exclusive, however, of any part of the Company's Forty-five Thousand (45,000) acre-feet of primary storage, and the water referred to in the last sentence of paragraph 10 of the 1923 contract. For the sole purpose of preserving to the Company the right it might otherwise have to the use of the

Two Hundred-Fifty-five Thousand (255,000) acre-feet of water, it is agreed that the whole of said Two Hundred Fifty-five Thousand (255,000) acre-feet of water shall be released from American Falls Reservoir once during each five-year period (or once during such lesser or other period as the Idaho status relating to abandonment of rights to the use of water may provide) for use at the American Falls plant of Company but at such times and in such manner as the officers of the United States in charge of American Falls Reservoir shall deem least detrimental to irrigation and provided that once in said five-year period or said lesser or other period there shall be released an amount of water sufficient to preserve to the Company the right to make the total flow at the head of Shoshone Falls in the amounts and at the times as prescribed and specified in said paragraph 21.

3. For the period from October 1 of each year to April 1 of the following year after the United States plant at Minidoka Dam has generated such energy as is available from the efficient use of the water available at said plant during such period then the Company agrees to deliver at approximately 132 k.v. at said Minidoka Power Plant from its power plant at American Falls or other of its power plants in Idaho such power and energy as is necessary to meet the power demands and uses on the Minidoka project, provided that the Company shall not be obligated in any event to furnish power hereunder

during said period in an amount which will make the total power available to the Minidoka project from the Company and from the Minidoka Power Plant exceed the 10,000 k.w. of winter power provided for in paragraph 23 of the 1923 contract. In consideration of the benefits which will inure to Company by the United States forebearing to construct a power plant at American Falls at the time of entering this contract and the Company being permitted to use through its power plant at American Falls during the period of this agreement such water in addition to its own as may be released from the American Falls Reservoir until such time as the United States may construct and place in operation a power plant at American Falls and the furnishing of certain power and energy by the United States to the Company and the indirect benefits that will inure to the Company by the conservation of water in American Falls reservoir and the other benefits accruing to the Company under this agreement, no charge shall be made under this agreement for the power and energy so furnished during the nonirrigating season.

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

At such time and as often as may be required during the months of April to September, inclusive, up to 7,500 k.w. of which

the power to be furnished over 4,000 k.w. is understood to be breakdown power only. By breakdown power as used herein is meant power furnished by the Company in excess of 4,000 k.w. to replace power temporarily lost or unavailable on account of a breakdown or interruption in operation of some part of the Minidoka power plant.

In consideration of the other benefits received by the Company under this agreement breakdown service will be furnished by the Company upon the payment by the United States of $2.00 per hour for the first 720 hours in each calendar year and for each hour thereafter in such calendar year United States will pay $4.00 per hour. No money payments shall be made for power furnished by the Company except for breakdown service.

B-1 The present Black Canyon contract under date of April 10, 1930, between United States and this Company is extended to run concurrently with this agreement, provided that the United States shall deliver to the Company under said Black Canyon contract all the Black Canyon power and energy available in excess of that power and energy now specifically reserved under said contract when used for construction and other purposes, including operating purposes at Owyhee Dam and Tunnel Canyon, and in excess of the power and energy being used by irrigation customers now served by the United States from said Black Canyon plant, except that the United States shall have the option to furnish power and energy to Owyhee Ditch

pumps and to the Payette Division of the Boise Project; also additional power to enlargements of and additions to the Payette-Oregon Slope pumping plant equal to the requirements of the Crystal Irrigation District, Bench Irrigation District, the Slide Irrigation District; also the requirements of the North and South Advancement pumps, provided that in the case of such Advancement pumps the United States Bureau of Reclamation shall install transformers to receive power from Company's present distribution lines, which latter provision is in addition to the transmission provisions of the present Black Canyon contract, provided in each instance above set forth other than the irrigation customers now served by the United States from the Black Canyon plant an equivalent reduction is made in the demands and uses of the Gem Irrigation District; however, for the seasons of 1935 and 1936 the requirements of Owyhee Ditch pumps and Advancement pumps may be supplied from a reduction in the demands of the Ontario-Nyssa pumps. And in addition thereto, the United States shall deliver to Company all power and energy available from the present Minidoka power plant not required for power demands and uses on said projects, except the power used at Albion, or in the event of enlargement of said plant, then from a capacity equal to the capacity of said present plant.

C Unless terminated in the manner hereinafter provided, this agreement shall remain in force and effect until such time as the

United States, its assigns, permittees or licensees shall construct, and place in operation a power plant at American Falls and the United States shall give Company at least sixty days' notice at its office at Boise, Idaho, of the date on which any such plant shall be placed in operation, provided that this agreement may be terminated by the United States at any date after five years from the effective date provided in "G" hereof by giving written notice to the Company at least two years prior to such date of termination and may be terminated by the Company at any date after 25 years from the said effective date hereof by giving notice to the Secretary of the Interior at least ten years prior to such date of termination; and Provided further, that the Secretary of the Interior may terminate this agreement at his option at any time, by giving the Company six months' written notice, in the event of a final court decision or final court decisions (A) holding (1) that the Secretary cannot lawfully secure an annual net income of $50,000 to reimburse the United States for the use of the Black Canyon plant by assessments or charges as an item of reservoir operation and maintenance cost against the parties who are benefited by the water saved hereunder, and also holding (2) that the Secretary cannot lawfully secure such income by sale of the power furnished under Article 3 and Section B thereof, to the Minidoka Irrigation District; or (B) holding that the Secretary may not discontinue or reduce the nonirrigation season use of the

power plant at Minidoka Dam in order to conserve the flow of Snake River for storage, for the purpose of irrigation, in the American Falls Reservoir for the benefit of the contracting parties therein, and in the proposed reservoir in the North Fork, if and when it is built. The United States, its assigns, permittees or licensees shall not within 5 years from the date of this agreement construct and/or place in operation additional generating facilities at Minidoka Dam for any purpose other than supplementary to the present facilities thereat in furnishing the power demands and uses on the Minidoka Project. During the life of this agreement the United States will not sell power from its Minidoka Project power system outside of the Minidoka Project in excess of an amount of power 850 k.w. less than the amount generated from the additional power unit or units hereafter installed at the Minidoka Dam except the power furnished at Albion.

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

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

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

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

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

I It is agreed that the water conserved and made available by the terms of this agreement is for storage in the American Falls Reservoir except the water saved by the Company's release of the right to have water discharged over Milner Dam which water may be stored in the North Fork Reservoir if built and is in lieu of water that would otherwise be conserved and so stored by the construction of the

said generating unit at the American Falls Reservoir and shall inure to the benefit of all parties interested in American Falls Reservoir in like manner and extent.

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

K No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit which may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

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

UNITED STATES OF AMERICA

(SEAL)

By (sgd) T. A. Walters
First Assistant Secretary
of the Interior

(SEAL)

Attest:

IDAHO POWER COMPANY

(Sgd) James L. Boone
Secretary

By (sgd) K. M. Robinson
President

Exhibit O

THE PALISADES DAM AND RESERVOIR PROJECT

HEARINGS

BEFORE A

SUBCOMMITTEE ON IRRIGATION AND RECLAMATION OF THE

COMMITTEE ON PUBLIC LANDS

HOUSE OF REPRESENTATIVES

AND A

SPECIAL SUBCOMMITTEE OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

EIGHTY-FIRST CONGRESS

FIRST SESSION

ON

H. R. 5506

A BILL TO AUTHORIZE THE PALISADES DAM AND RESERVOIR PROJECT, TO AUTHORIZE THE NORTH SIDE PUMPING DIVISION AND RELATED WORKS, TO PROVIDE FOR THE DISPOSITION OF RESERVED SPACE IN AMERICAN FALLS RESERVOIR, AND FOR OTHER PURPOSES

AUGUST 8, 9, 10, 11, 12, 18, AND 19, 1949

Serial 20

Printed for the use of the House Committee on Public Lands and the Senate Committee on Interior and Insular Affairs

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ARTHUR V. WATKINS, Utah
BERT H. MILLER, Idaho

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PALISADES DAM AND RESERVOIR PROJECT

MONDAY, AUGUST 8, 1949

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IRRIGATION AND RECLAMATION OF
THE COMMITTEE ON PUBLIC LANDS, AND A SUBCOMMITTEE
OF THE SENATE INTERIOR AND INSULAR AFFAIRS COMMITTEE,
Washington, D. C.

The subcommittees met at 10 a. m. in the committee room of the House Committee on Public Lands, Hon. John R. Murdock (chairman of the subcommittee on Irrigation and Reclamation) presiding.

Mr. MURDOCK. The committee will come to order, please.

We have the pleasure of having the Senate subcommittee on this legislation with us this morning. Senator Miller, will you come up?

Also, Senator Taylor. Senator McFarland will be a little bit late.

Senator TAYLOR. I just wanted to make a little statement, but I will sit up here with you.

Mr. MURDOCK. We are glad to have you.

The Subcommittee on Irrigation and Reclamation has been called this morning to consider H. R. 5506, a bill to authorize the Palisades Dam and Reservoir project, to authorize the north side pumping division and related works, to provide for the disposition of reserved space in American Falls Reservoir, and for other purposes.

The bill will be inserted in the record at this point.

(The bill is as follows:)

[H. R. 5506, 81st Cong., 1st sess.]

A BILL To authorize the Palisades Dam and Reservoir project, to authorize the north side pumping division and related works, to provide for the disposition of reserved space in American Falls Reservoir, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Palisades Dam and Reservoir project, Idaho, heretofore authorized under the provisions of the Federal reclamation laws by the presentation to the President and the Congress of the report of December 9, 1941 (House Document Numbered 457, Seventy-seventh Congress, first session), by the Secretary of the Interior (herein called the Secretary), is hereby reauthorized under the Federal reclamation laws for construction and operation and maintenance substantially in accordance with that report as supplemented and modified by the Commissioner's supplemental report and the recommendations incorporated by reference therein, as approved and adopted by the Secretary on July 1, 1949.

SEC. 2. There are hereby authorized for construction and operation and maintenance under the Federal reclamation laws: (a) the north side pumping division of the Minidoka project, this to be substantially in accordance with the Commissioner's report and the recommendations incorporated by reference therein, as approved and adopted by the Secretary on July 1, 1949; and (b) for the furnishing of electric power for irrigation pumping to that division and for other purposes, power generating and related facilities at American Falls Dam. These generating and related facilities, to the extent the Secretary finds to be proper for pay-out and rate-making purposes, may be accounted for together with other power facilities operated by the Bureau of Reclamation that are interconnected with the American Falls Dam power facilities, excluding any power

Mr. SANBORN. Mr. Chairman, I would like to make one little observation in connection with the underground flow. That takes in not only the water that runs under this tract of land, but the water that accumulates from other sources also and comes out in the springs along Snake River below Milner Dam on through Hagerman Valley. The water coming from these springs has an average temperature of 58 degrees, and raises the temperature of the water in Snake River to a point that, in the very coldest weather, the river is free of ice for better than a hundred miles downstream.

That fact indicates what a volume of water flows underground through the over-all territory.

Mr. MURDOCK. We thank you kindly for the statement.

Mr. BARRETT. Mr. Chairman, I received a copy of a letter from our State engineer which we were expecting. Mr. Nelson has the original. I think perhaps it ought to be put in the record today.

Mr. Nelson, do you want to furnish that letter for the committee here?

Mr. NELSON. We just received the report.

Mr. BARRETT. You have the letter from Mr. Bishop?

Mr. NELSON. Yes, sir.

Mr. BARRETT. I think it should be in the record, Mr. Chairman. I ask unanimous consent that the letter from our State engineer, Mr. L. C. Bishop, to Secretary Nelson, be placed in the record at this point.

Mr. MURDOCK. Without objection, it will be so ordered.

Mr. NELSON. This letter from the State engineer's office, I assume he is representing the State of Wyoming in this case for the Governor in making the report. It can be inserted in the record if you wish at this point. It is a very brief letter.

Mr. MURDOCK. Perhaps it ought to be read.

Mr. NELSON. If you wish it read, I shall do so right now.

Mr. MURDOCK. Let us have it read.

Mr. NELSON. It is addressed to me as Acting Commissioner of the Bureau of Reclamation, signed by Mr. L. C. Bishop, State engineer.

DEAR MR. NELSON: This will acknowledge receipt of your letter of July 8, 1949, including two copies of your supplemental report on the Palisades Dam and Reservoir project in Idaho. One of these copies is being mailed to Mr. Clifford Hansen, at Jackson, Wyo.

Wyoming water rights, and in particular its right to the use of an equitable portion of the water of Snake River unappropriated at this time, would be seriously jeopardized by construction of this project in the absence of a compact or agreement with Idaho on division of the water.

Representatives of the two States have recently met and entered into an agreement that must be drafted into the form of a compact and approved by the representatives of the States, the legislatures and governors of the States, and consented to by the Congress of the United States before it becomes effective.

With the assistance of Mr. R. J. Newell, Federal representative on the Snake River Compact Commission, and the legal and engineering staff of the Bureau of Reclamation, I feel sure that a satisfactory compact will finally be approved.

My only further comment is to the effect that your report appears to be complete and comprehensive, and seems to be ample evidence of the necessity for construction of Palisades Reservoir in the over-all development plan for the Columbia River Basin.

Yours very truly,

L. C. BISHOP,
State Engineer.

While I am on my feet, I would like to state that we have now received the report of the Secretary of the Interior on the bill before

you, one addressed to the chairman of the Public Lands Committee of the House, and the other addressed to Senator O'Mahoney, chairman of the Interior and Insular Affairs, and I would like to submit those at this time.

Mr. MURDOCK. We would be very glad to have the reports and they will be placed in the record at this point.

(The letters referred to are as follows:)

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, August 10, 1949.

MY DEAR MR. PETERSON: You have asked for an expression of our views on H. R. 5506, a bill to authorize the Palisades Dam and Reservoir project, to authorize the north side pumping division and related works, to provide for the disposition of reserved space in American Falls Reservoir, and for other purposes.

We recommend that the bill in question be enacted.

Enactment of this legislation would constitute a long step forward in the development of the water resources of the upper Snake River Valley in Idaho and in the settlement of an extremely complicated water-right problem in that area. The legislation and actions taken in its fulfillment will long be looked on as an example of the ability of contending groups of water users, acting in cooperation with the Federal Government, to resolve difficult water-use problems.

The bill deals with several major, but closely related, physical undertakings, these being Palisades Dam and Reservoir, American Falls Dam, and the proposed north side pumping division of the Minidoka project. These physical undertakings are all related in the solution of the water problems of the upper Snake River Valley. The problems arise because of the need for supplemental storage in the valley. This need will be met with the building of Palisades Dam and Reservoir, though this is but part of the solution. The whole solution requires the providing of authority with respect to the use of that reservoir and related existing storage facilities, and the making of appropriate arrangements under that authority.

A brief résumé of the problems involved and the negotiations with respect to them will show this interrelationship and the desirability, even necessity, of treating the major physical undertakings together in the proposed legislation.

Palisades Dam was initially authorized in 1941 (H. Doc. No. 457, 77th Cong. 1st sess.) on the basis of a finding of feasibility made by the Secretary under the provisions of section 9 of the Reclamation Project Act of 1939 (53 Stat. 1187). The construction of the project was regarded, however, at least administratively, as dependent on there being assurance of a minimum water supply through the curtailment of certain wasteful winter diversions in the upper Snake River Valley. A comprehensive study of water supply and use in that area was completed and a report on the findings was released in December 1946. Negotiations with the water users as to winter water savings and future repayment of the portion of the cost of Palisades Dam to be repaid by water users were began immediately. The water users raised at the outset, however, the question as to the final disposition of the 433,393 acre-feet of reserved space in American Falls Reservoir then under lease to them.

The United States proposed that this reserved space continue to be set aside for the development of new lands in accordance with plans in contemplation when American Falls Reservoir was built in 1927. The present lessees of that space, however, argued that the entire space should be sold to them. The United States recognized the position of those water users as having some merit, but it was felt that there were sounder reasons for recommending the development of some 67,000 acres of new land—30,000 acres in the Michaud Flats area and 37,000 acres comprising the better public lands long under withdrawal for development as part of the north side pumping division of the Minidoka project. This proposition was a compromise, for it involved the development of but a portion of the lands under withdrawal for the north side pumping division. While the negotiations with the water users were going on, however, the possibility of developing ground water as a source of supply for a substantial portion of the north side pumping division was explored and the results held promise. This made possible a further compromise as to the use of American Falls space. The compromise tentatively worked out provides for the disposal of 315,000 acre-feet of the total reserved space to the existing water users who have heretofore

leased that space. The balance is to be allocated: 47,593 acre-feet to unit A of the north side pumping division, and 71,000 acre-feet to the lands in the Michaud area which lies between Pocatello and American Falls.

The proposal to develop the north-side pumping division in a large part with ground water focused attention anew on the problem of the most suitable source of irrigation pumping power. The conclusion reached was that completion of the power installation at American Falls Dam was the answer because it is especially adaptable to seasonal production and would afford a good way of realizing on the investment initially made in power facilities when the dam was built. It also promises to afford the best way of providing for the continuation of a needed winter water-savings program through curtailment of winter power generation at Minidoka Dam and Shoshone Falls. Accordingly the bill covers both authorization of the north-side pumping division and authorization of the power installation at American Falls as a primary source of pumping power.

The major purpose of each section of the bill and important aspects of the works covered thereby are discussed below.

Section 1 of the bill relates to Palisades Dam, with respect to which supplemental authority is needed. The dam, as now proposed to be built, is essentially the same as that initially authorized, although it is proposed now to increase the capacity of the outlet works to permit greater flexibility in flood-control operations and to increase the maximum power installation to approximately 112,500 kilowatts. The total cost of the proposed project estimated as of January 1, 1949, is $76,601,000. The proposed allocations of these costs are covered fully in the supplemental report to which reference is made in the bill. The project, on the basis of such allocations and prospective returns, is regarded as financially feasible.

Two or three aspects of the proposed operating plan for the reservoir are unique and have a direct bearing on the allocation of costs and, consequently, on pay-out. The flood-control plan discussed in detail in appendix A of the allocation report has been worked out between the Bureau of Reclamation and the Corps of Engineers. That plan involves the joint use, on the basis of run-off forecasts, of all active space in the reservoir for irrigation and flood-control purposes. The run-off forecasts would be improved by continuation and extension of the existing hydrometeorological network. Such a plan justifies a substantially larger allocation to flood control than would be possible were but a portion of the reservoir space to be made available for flood-control purposes. The study of that plan, based on past years of record, indicates that the plan can operate without any substantial detriment to the total amount of irrigation storage water to be released.

No account is taken of the increased allocation to flood control that might be justified when and if a more extensive reservoir system for the control of floods on the main stem of the Columbia River, such as proposed in the report of June 28, 1949, of the Chief of Engineers, is authorized, but it is expected that at such time there could be reevaluation if authority in law for such a review is then extent.

The proposed allocation to recreation is regarded as justified because with Palisades Reservoir in operation it will become possible and desirable, from a water savings point of view, to maintain Jackson Lake at full level throughout the tourist season. Only in extremely dry years would there be any substantial withdrawal from Jackson Lake during that season. In terms of tourist attraction in an area so widely known throughout the United States this change of operating plan is regarded as capable of a high monetary valuation, which would adequately justify the proposed allocation of project costs to recreation. The basis of the valuation and allocation of project costs to recreation is explained in appendix C of the supplemental report.

All proposals of consequence with respect to Palisades Dam and Reservoir will be made effective through the adoption, by section 1 of the bill, of the specific recommendations incorporated by reference to the supplemental report approved by the Secretary on July 1, 1949.

Authorization of the north side pumping division of the Minidoka project will be affected by the provisions of section 2 of the bill. A full description of the project works and a discussion of the engineering and financial aspects of this undertaking appear in the Commissioner's report as approved and adopted by the Secretary on July 1, 1949.

The primary source of pumping power suggested in that report is the power installation at American Falls Dam. At the pumping power rate assumed in the report, the proposed works are regarded as financially feasible, although, be-

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cause of the relatively high estimated annual cost to water users, it is proposed, through adoption of the specific recommendations incorporated by reference in the report, to permit use of a repayment plan somewhat different from that now provided by section 9 of the Reclamation Act of 1939.

Section 2 of the bill covers, in addition to the north side pumping division, the completion of the long-deferred power installation at American Falls Dam and the treating of this and the Palisades power plant and the related transmission system as one unit for pay-out and rate-making purposes. There is attached a financial study (Financial Study of Proposed Completion of American Falls Power Plant) dealing with the American Falls power plant as it could be operated in conjunction with the Palisades plant, having regard for the limited power water rights of the United States at American Falls Dam. This study shows the proposed installation to be feasible, using rates for pumping power in keeping with those in north side pumping division report to which this study is complementary.

The construction and operation of the American Falls power installation will result in the termination of a contract of October 1, 1934, with the Idaho Power Co. That contract had as its main purpose the conservation of water for irrigation use, but it was made possible at the cost of committing to the power company all surplus power of the Black Canyon power plant of the Boise project. It is desirable to continue the water-conservation features of that contract, but to do so other than by continuing the commitment as to the Black Canyon power. The American Falls power installation appears to be the best means for accomplishing this.

Through the adoption of the specific recommendations incorporated by reference in the Commissioner's supplemental report on Palisades and the north side pumping division, as approved and adopted by the Secretary, there will be authorized transmission facilities in the upper Snake River Valley for the connection of the Palisades power plant with other Federal power plants and pumping projects in that area that would include the interconnection of the Palisades plant and the American Falls installation. There will be also authorization for the building of a distribution system in the north side pumping division to serve the various pumping facilities of that undertaking. It is not proposed, however, that the United States continue indefinitely to operate that distribution system; accordingly, provision is made for its ultimate disposition either by sale or through some lease arrangement to some local organization.

Section 3 of the bill will give authority for the ultimate disposition of reserved space in American Falls Reservoir in keeping with the tentative agreement reached with the water users of the upper Snake River Valley. The capacity set aside for the north side pumping division is in accord with the report on that division. Plans for the use of the space set aside for lands in the Michaud area have yet to be fully developed. The act of June 5, 1924 (43 Stat. 390, 417), provided for an interest payment of 6 percent per annum on deferred payments of American Falls construction costs. In keeping with existing reclamation policy, it is now proposed, however, to permit deferred payments without interest. It is proposed, also, to permit a part of the returns heretofore realized by the United States from the lease of American Falls space to be applied to the reduction of the purchase price of the space.

Section 4 of the bill has two provisions of some consequence, though they are merely ancillary to the main purpose of the bill. It is proposed, first, that the Congress make continuation of the construction of Palisades Dam beyond December 31, 1950, contingent on there being assurance satisfactory to the Secretary that the desired average annual water savings amounting to 135,000 acre-feet will be achieved. While tentative agreement has been reached with respect to all principles to govern contracts for winter water savings, it is regarded as of importance that these principles be made effective through contracts before construction of Palisades Dam proceeds very far. The imposition of such a time limit by the Congress is believed desirable for the accomplishment of this objective. The provision for extending the time limit in some circumstances is desirable.

This same section provides also that the contracts to be entered into with respect to American Falls and Palisades space may include such provisions as the Secretary finds to be proper to insure the continued effectiveness of the winter water-savings program. A part of the winter water-savings program involves providing special storage rights to water users participating in that program, but it is important that, through contract provisions, all who contract as to the use of American Falls and Palisades space be required to recognize these special

storage rights. It is desirable to have legislative foundation for such a requirement, as will be provided in this section of the bill.

The State of Wyoming has an indirect interest in the proposed legislation, particularly with respect to Palisades Dam and Reservoir. There is a relationship between the storage of water in Palisades Reservoir and the priorities therefor and the use of additional water of the Snake River for lands in Wyoming. Negotiations are now going on with respect to a compact between Wyoming and Idaho, and, if agreements are reached in those negotiations, the interests of Wyoming will be adequately protected. The Department, through the Federal representative, Mr. Newell, is actively engaged in seeking an equitable solution. It would be salutary, indeed, if agreement in the negotiations were to be reached before action is taken by the Congress on the proposed legislation, but it is our view that action on the legislation should be taken as early as possible without regard to the status of negotiations on the compact. There will be ample time for settlement of the issues involved in those negotiations while actual construction of Palisades Dam is in progress.

Your committee will wish, no doubt, to correct a typographical error on page 4, line 2, of the bill. The fraction there stated is "three hundred and sixty-eight four-hundred-and-thirty-fourths." It should read "three hundred and eighty-six four-hundred-and-thirty-fourths." Also, it is recommended that the expression "Secretary" be substituted for the expression "Bureau of Reclamation," in line 19, on page 2, of the bill.

Inasmuch as it is my understanding that your committee desires an immediate report on this bill, I am unable to advise you concerning its relation to the program of the President.

Sincerely yours,

J. A. KRUG,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington 25, D. C., August 10, 1949.

Hon. JOSEPH C. O'MAHONEY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington 25, D. C.

MY DEAR SENATOR O'MAHONEY: You have asked for an expression of our views on S. 2195 and S. 2208, bills to authorize the Palisades Dam and Reservoir project, to authorize the north-side pumping division and related works, to provide for the disposition of reserved space in American Falls Reservoir, and for other purposes. The bills in question are identical.

We recommend that legislation along the lines proposed by these bills be enacted.

Enactment of this legislation would constitute a long step forward in the development of the water resources of the upper Snake River Valley in Idaho and in the settlement of an extremely complicated water-right problem in that area. The legislation and actions taken in its fulfillment will long be looked on as an example of the ability of contending groups of water users, acting in cooperation with the Federal Government, to resolve difficult water-use problems.

The bills deal with several major, but closely related, physical undertakings, these being Palisades Dam and Reservoir, American Falls Dam, and the proposed north-side pumping division of the Minidoka project. These physical undertakings are all related in the solution of the water problems of the upper Snake River Valley. The problems arise because of the need for supplemental storage in the valley. This need will be met with the building of Palisades Dam and Reservoir, though this is but part of the solution. The whole solution requires the providing of authority with respect to the use of that reservoir and related existing storage facilities, and the making of appropriate arrangements under that authority.

A brief résumé of the problems involved and the negotiations with respect to them will show this interrelationship and the desirability, even necessity, of treating the major physical undertakings together in the proposed legislation.

Palisades Dam was initially authorized in 1941 (H. Doc. No. 457, 77th Cong., 1st sess.) on the basis of a finding of feasibility made by the Secretary under the provisions of section 9 of the Reclamation Project Act of 1939 (53 Stat. 1187). The construction of the project was regarded, however, at least administratively, as dependent on there being assurance of a minimum water supply

through the curtailment of certain wasteful winter diversions in the upper Snake River Valley. A comprehensive study of water supply and use in that area was completed and a report on the findings was released in December 1940. Negotiations with the water users as to winter water savings and future repayment of the portion of the cost of Palisades Dam to be repaid by water users were begun immediately. The water users raised at the outset, however, the question as to the final disposition of the 433,503 acre-feet of reserved space in American Falls Reservoir then under lease to them.

The United States proposed that this reserved space continue to be set aside for the development of new lands in accordance with plans in contemplation when American Falls Reservoir was built in 1927. The present lessees of that space, however, argued that the entire space should be sold to them. The United States recognized the position of those water users as having some merit, but it was felt that there were sounder reasons for recommending the development of some 67,000 acres of new land—30,000 acres in the Michaud Flats area and 37,000 acres comprising the better public lands long under withdrawal for development as part of the north side pumping division of the Minidoka project. This proposition was a compromise, for it involved the development of but a portion of the lands under withdrawal for the north side pumping division. While the negotiations with the water users were going on, however, the possibility of developing ground water as a source of supply for a substantial portion of the north side pumping division was explored and the results held promise. This made possible a further compromise as to the use of American Falls space. The compromise tentatively worked out provides for the disposal of 315,000 acre-feet of the total reserved space to the existing water users who have heretofore leased that space. The balance is to be allocated: 47,593 acre-feet to unit A of the north side pumping division, and 71,000 acre-feet to the lands in the Michaud area which lies between Pocatello and American Falls.

The proposal to develop the north side pumping division in a large part with ground water focused attention anew on the problem of the most suitable source of irrigation pumping power. The conclusion reached was that completion of the power installation at American Falls Dam was the answer because it is especially adaptable to seasonal production and would afford a good way of realizing on the investment initially made in power facilities when the dam was built. It also promises to afford the best way of providing for the continuation of a needed winter water savings program through curtailment of winter power generation at Minidoka Dam and Shoshone Falls. Accordingly, the bills cover both authorization of the north side pumping division and authorization of the power installation at American Falls as a primary source of pumping power.

The major purpose of each section of the bills and important aspects of the works covered thereby are discussed below.

Section 1 of each of the bills relates to Palisades Dam, with respect to which supplemental authority is needed. The dam, as now proposed to be built, is essentially the same as that initially authorized, although it is proposed now to increase the capacity of the outlet works to permit greater flexibility in flood-control operations and to increase the maximum power installation to approximately 112,500 kilowatts. The total cost of the proposed project estimated as of January 1, 1949, is $76,601,000. The proposed allocations of these costs are covered fully in the supplemental report to which reference is made in the bill. The project, on the basis of such allocations and prospective returns, is regarded as financially feasible.

Two or three aspects of the proposed operating plan for the reservoir are unique and have a direct bearing on the allocation of costs, and, consequently, on pay-out. The flood-control plan discussed in detail in appendix A of the allocation report has been worked out between the Bureau of Reclamation and the Corps of Engineers. That plan involves the joint use, on the basis of run-off forecasts, of all active space in the reservoir for irrigation and flood-control purposes. The run-off forecasts would be improved by continuation and extension of the existing hydrometeorological network. Such a plan justifies a substantially larger allocation to flood control than would be possible were but a portion of the reservoir space to be made available for flood-control purposes. The study of that plan, based on past years of record, indicates that the plan can operate without any substantial detriment to the total amount of irrigation storage water to be realized.

No account is taken of the increased allocation to flood control that might be justified when and if a more extensive reservoir system for the control of floods

on the main stem of the Columbia River, such as proposed in the report of June 28, 1949, of the Chief of Engineers, is authorized, but it is expected that at such time there could be reevaluation if authority in law for such a review is then extant.

The proposed allocation of project costs to fish and wildlife is in keeping with the policy established by the Congress in the act of August 14, 1946 (60 Stat. 1081), but in this instance is dependent upon 55,000 acre-feet of Palisades space being made available to the Fort Hall Indian Reservation as replacement storage for that which it now receives from Gray's Lake and on the actual establishment of Gray's Lake as a wildlife-management area. The latter step will require, among other things, the acquisition of adequate rights-of-way.

The proposed allocation to recreation is regarded as justified because with Palisades Reservoir in operation it will become possible and desirable, from a water savings point of view, to maintain Jackson Lake at full level throughout the tourist season. Only in extremely dry years would there by any substantial withdrawal from Jackson Lake during that season. In terms of tourist attraction in an area so widely known throughout the United States, this change of operating plan is regarded as capable of a high monetary valuation, which would adequately justify the proposed allocation of project costs to recreation. The basis of the valuation and allocation of project costs to recreation is explained in appendix C of the supplemental report.

All proposals of consequence with respect to Palisades Dam and Reservoir will be made effective through the adoption by section 1 of the bill, of the specific recommendations incorporated by reference in the supplemental report approved by the Secretary on July 1, 1949.

Authorization of the north side pumping divisions of the Minidoka project will be effected by the provisions of section 2 of the bills. A full description of the project works and a discussion of the engineering and financial aspects of this undertaking appear in the Commissioner's report, as approved and adopted by the Secretary on July 1, 1949. The primary source of pumping power suggested in that report is the power installation at American Falls Dam. At the pumping power rate assumed in the report, the proposed works are regarded as financially feasible, although, because of the relatively high estimated annual cost of water users, it is proposed, through adoption of the specific recommendations incorporated by reference in the report, to permit use of a repayment plan somewhat different from that now provided by section 9 of the Reclamation Project Act of 1939.

Section 2 of the bills covers, in addition to the north side pumping division, the completion of the long deferred power installation at American Falls Dam and the treating of this and the Palisades power plant and the related transmission system as one unit for payout and rate-making purposes. Power penstocks were included in the dam when it was first built and it was then planned to complete the installation with a primary purpose being to provide irrigation pumping power. There is attached a financial study (Financial Study of Proposed Completion of American Falls Power Plant) dealing with the American Falls power plant as it could be operated in conjunction with the Palisades plant, having regard for the limited power water rights of the United States at American Falls Dam. This study shows the proposed installation to be feasible, using rates for pumping power in keeping with those in the north side pumping division report to which this study is complementary.

The construction and operation of the American Falls power installation will result in the termination of a contract of October 1, 1934, with the Idaho Power Co. That contract had as its main purpose the conservation of water for irrigation use, but it was made possible at the cost of committing to the Power Company all surplus power of the Black Canyon power plant of the Boise project. It is desirable to continue the water conservation features of that contract but to do so other than by continuing the commitment as to Black Canyon power. The American Falls power installation appears to be the best means for accomplishing this.

Through the adoption of the specific recommendations incorporated by reference in the Commissioner's supplemental report on Palisades and the north side pumping division, as approved and adopted by the Secretary, there will be authorized transmission facilities in the upper Snake River Valley for the connection of the Palisades power plant with other Federal power plants and pumping projects in that area that would include the interconnection of the Palisades plant and the American Falls installation. There also will be authorization for the building of a distribution system in the north side pumping division to serve the

various pumping facilities of that undertaking. It is not proposed, however, that the United States continue indefinitely to operate that distribution system; accordingly, provision is made for its ultimate disposition either by sale or through some lease arrangement to some local organization.

Section 3 of the bills will give authority for the ultimate disposition of reserved space in American Falls Reservoir in keeping with the tentative agreement reached with the water users of the upper Snake River Valley. The capacity set aside for the north side pumping division is in accord with the report on that division. Plans for the use of the space set aside for lands in the Michaud area have yet to be fully developed. The act of June 5, 1924 (43 Stat. 390, 417), provided for an interest payment of 6 percent per annum on deferred payments of American Falls construction costs. In keeping with existing reclamation policy, it is now proposed, however, to permit deferred payments without interest. It is proposed also, to permit a part of the returns heretofore realized by the United States from the lease of American Falls space to be applied in the reduction of the purchase price of the space.

Section 4 of the bills has two provisions of some consequence though they are merely ancillary to the main purposes of the bill. It is proposed, first, that the Congress make continuation of the construction of Palisades Dam beyond December 31, 1950, contingent on there being assurance satisfactory to the Secretary that the desired average annual water savings amounting to 135,000 acre-feet will be achieved. While tentative agreement has been reached with respect to all principles to govern contracts for winter water savings, it is regarded as of importance that these principles be made effective through contracts before construction of Palisades Dam proceeds very far. The imposition of such a time limit by the Congress is believed desirable for the accomplishment of this objective. The provision for extending the time limit in some circumstances is desirable.

This same section provides also that the contracts to be entered into with respect to American Falls and Palisades space may include such provisions as the Secretary finds to be proper to insure the continued effectiveness of the winter water savings program. A part of the winter water savings program involves providing special storage rights to water users participating in that program, but it is important that, through contract provisions, all who contract as to the use of American Falls and Palisades space be required to recognize these special storage rights. It is desirable to have legislative foundation for such a requirement, as will be provided in this section of the bill.

The State of Wyoming has an indirect interest in the proposed legislation, particularly with respect to Palisades Dam and Reservoir. There is a relationship between the storage of water in Palisades Reservoir and the priorities therefor and the use of additional water of the Snake River for lands in Wyoming. Negotiations are now going on with respect to a compact between Wyoming and Idaho and, if agreement is reached in those negotiations, the interests of Wyoming will be adequately protected. The Department, through the Federal representative, Mr. Newell, is actively engaged in seeking an equitable solution. It would be salutary, indeed, if agreement in the negotiations were to be reached before action is taken by the Congress on the proposed legislation, but it is our view that action on the legislation should be taken as early as possible without regard to the status of negotiations on the compact. There will be ample time for settlement of the issues involved in those negotiations while actual construction of Palisades Dam is in progress.

Your committee will wish, no doubt, to correct a typographical error on page 4, line 2, of the bill. The fraction there stated is "three hundred and sixty-eight four-hundred-and-thirty-fourths." It should read "three hundred and eighty-six four-hundred-and-thirty-fourths." Also, it is recommended that the expression "Secretary" be substituted for the expression "Bureau of Reclamation," in line 18, on page 2 of the bill.

Inasmuch as I understand that your committee wishes an immediate report on this bill, I am unable to advise you concerning its relation to the program of the President.

Sincerely yours,

J. A. Krug,
Secretary of the Interior.

(The statement requested by the committee is as follows:)

The committee understands from the Palisades supplemental report referred to in the bill that the Bureau of Reclamation plans to vacate and to hold vacant until May 1 of each year, unless forecasts indicate the need for earlier filling, 200,000 acre-feet of storage space in Jackson Lake Reservoir. It understands also that, in order to operate Jackson Lake on a forecast basis with the object of providing more space for flood control annually, an agreement would need to be entered into among the United States and the various water users' organizations who have legal rights to the use of Jackson Lake space for irrigation storage.

The committee is of the opinion, however, that the Bureau of Reclamation should make every reasonable effort to work out agreements with the interested water users' organizations to the end that, through use of run-off forecasts, a greater use of space in Jackson Lake for flood-control purposes can be effected for the benefit of the flood plain in Wyoming without materially infringing on the right of the water users to have the greatest possible use of Jackson Lake space for irrigation storage.

Mr. STINSON. I have just one other contractural arrangement about which I wish to speak for a moment. Mr. Clinton has told you that we have in effect now with the Idaho Power Co. this contract of October 1934; that is, a very complicated contract. Among its purposes was that of providing for some winter water savings in the operation of some Idaho power plants below Milner Dam. We recognize that the water-savings feature of that agreement needs to be carried forward and made effective through some new contract to be entered into with the power company. He has pointed out to you that we hope to be able to work out such an agreement, using, as at least part of our trading stock, replacement power that will be available from this American Falls power installation.

Related to that is the problem of working out some new arrangement for the continuation of the commercial power business of the Minidoka project.

You remember that Mr. Newell told you that that commercial power enterprise was undertaken very early in the history of the project. It has grown to be quite a thing for the project. The water users are getting the full benefit in terms of net power revenues from the first six units of that seven-unit power plant. It is necessary now to work out some new arrangement whereby commercial power will be provided for that system during the summer when all power produced at the Minidoka power plant is required for irrigation pumping on that project.

In the course of working out such a contract, we are going to find it necessary somehow to pass back to those who get the benefit of winter water savings a part of the cost of providing that power for the Minidoka commercial system. We have made an estimate of that cost in terms of $64,000 per year. It is a most complex thing. I do not think that I should try to get into it much further here other than to tell you we have that ahead of us. It is a matter of negotiation, but nothing in this act prejudges the manner in which we handle that particular arrangement. I speak of it partly for the record because the Minidoka project is considerably interested in that item.

I think that covers all the features of the bill in the report that I want to call to your attention now. I took practically 40 minutes, and I am sorry.

I would like to say that I would like to have the opportunity possibly of answering questions as the result of Mr. Gale's testimony and

Mr. Corey's testimony. I think that there may be some information, particularly with respect to transmission lines being built and what not, that you would like to have.

Mr. MURDOCK. I think that would be better. We will ask you to hold yourself in readiness to answer questions.

Mr. D'EWART. I have one or two questions. The over-all cost of the Palisades is $76,601,000 and for Minidoka, $11,395,000.

Mr. STINSON. Yes.

Mr. D'EWART. Are there any other costs included in this project?

Mr. STINSON. The American Falls power plant.

Mr. D'EWART. How much is the over-all for that?

Mr. STINSON. $6,600,000.

Mr. D'EWART. Those figures include 15 percent for contingencies and 15 percent for engineering and overhead.

Mr. STINSON. You have pointed out that they do, and I think you are right.

Mr. D'EWART. That is all.

Mr. MURDOCK. Thank you, Mr. Stinson.

We will hear from Mr. Gale.

STATEMENT OF RALPH GALE, IDAHO POWER CO., BOISE, IDAHO

Mr. GALE. My name is Ralph Gale.

First, I would like to show the committee the area in which our company operates, on this map.

This map was not prepared for this particular purpose, but I believe it will show you the area in which our company operates in the Rocky Mountain States, including this territory which I have circled [indicating].

We have connections with the California-Pacific Utilities Co. on the west and with the Utah Power & Light Co. on the south and to the east.

Mr. POULSON. Will you show us where these other power lines are going in?

Mr. GALE. Do you mean the power lines that are covered in this bill?

Mr. POULSON. Approximately.

Mr. GALE. They would start from Palisades over here [indicating]. I have not seen the exact routing. Mr. Clinton, of the Bureau, has stated that there are two lines from Palisades to Pocatello. That is approximately in this direction [indicating], and then one line from Pocatello to American Falls and on to Minidoka and down to about Milner. That is a description of the 115,000-volt lines which are proposed in this bill. The majority of these lines would duplicate our transmission system.

I am assistant to the president of the Idaho Power Co., which is a privately financed electric service company operating in southern Idaho, eastern Oregon, and northern Nevada. It is not financially or otherwise affiliated with any other company, holding company, or system. It is owned by 9,500 stockholders. Approximately one-third, or over 3,000, of the stockholders reside in the territory of the company. Our bonds are owned by 16 nationally known insurance companies and 3 pension-fund investor groups.

Our company serves a large part of the territory involved in H. R. 5506, and we are in favor of the authorizations requested, with the

exception of the transmission, substation, and distribution features, which in our opinion will require an unnecessary expenditure of Federal funds; because the existing privately owned utility companies are ready and willing to furnish all of the necessary transmission, substation, and distribution facilities required to transmit Palisades and American Falls power from one plant to the other and from these plants to irrigation districts and irrigation pumping units as described in the reports which are made a part of this bill. The annual charges for this service will be much less than those costs which would be incurred by the Bureau of Reclamation if these facilities are constructed, owned, and operated by the Bureau.

Idaho Power Co. will also purchase all firm, pumping, and nonfirm power which the Bureau of Reclamation releases for our use at prices designated in the reports made a part of H. R. 5506, providing the pumping and nonfirm power is produced at a time when our system or any of the other interconnected systems can use such pumping and dump power. Furthermore, if the interconnection of the Bureau of Reclamation power plants through our system result in any additional firm power, we will purchase this firm power at the above-designated firm power rate.

The foregoing offer by privately financed utilities to construct facilities, transmit power and purchase the surplus will result in the maximum net income for the water users of the area and in decreased overall project-operating expenses. This proposal will also provide the desired irrigation facilities and will require less expenditure of Federal funds than is proposed by the Bureau in the amount of approximately $11,000,000. The plan herein outlined will eliminate the necessity for the duplication of existing utility company facilities and the destruction of the investment of our stockholders residing in Idaho and throughout the Nation. It will also place an additional $11,000,000 of property on the tax rolls of the communities of southern Idaho.

We desire the authorization of these irrigation projects and endorse the irrigation program as outlined by the Bureau of Reclamation, but believe that in fairness to those stockholders who have invested their savings in our company, the Idaho Power Co. facilities should be used as herein suggested. We therefore respectfully request that authorization for the construction of transmission lines, substations, and distribution lines included in the reports which are made a part of H. R. 5506 be denied.

Now, there are a couple of points which I would like to mention because there has been some misinformation injected into the record.

The first is regarding the Clawson project. We became involved in the Clawson project because originally he desired to develop this land located about 12 miles to the north of Paul, Idaho, here [indicating] by pumping from deep wells. There are six wells in this area [indicating] which is called the Clawson project, and has been referred to repeatedly in this hearing.

There are four of those wells producing approximately 8 second-feet of water per well, and two producing approximately 12 second-feet of water.

I believe an examination of the record will show that it was stated that they would water approximately a half section of land. As a matter of fact, each of the four smalled wells waters one section of

land—640 acres—and the two larger wells water a section and a half of land.

In order to serve this project up there with electric service, we constructed a line from the Minidoka power plant or substation there up to these wells on the Clawson project [indicating], and as Mr. Clinton stated, immediately after that various individuals owning sections of land here 3 miles northwest of the Bureau's Minidoka power plant [indicating], here 9 miles north of Rupert [indicating], here 6 miles northwest of Rupert [indicating], here 13 miles north of Rupert [indicating], and here 4 miles west and 2 miles north of Paul [indicating] applied to our company for service, and, since we are a public utility, we are required to serve those who apply, providing they meet our ordinary rules and regulations and providing they meet the desires of the Public Utility Commission of Idaho. In the first place, this is a 138,000-volt transmission line [indicating] extending east and west across unit B, 6 miles north of Rupert.

Mr. BARRETT. Mr. Gale, I think for the record you ought to be referring to the map and indicating proximity to towns, cities, and geographical locations. You have indicated heretofore, "here, here, and here." That will not mean anything in the record.

Mr. POULSON. Do you have a map showing your lines in comparison with the other lines?

Mr. GALE. Yes; I have a map here which was very hurriedly put together because of the fact that we only knew of this 2 days before I came here.

Mr. BARRETT. Off the record.

(Discussion off the record.)

Mr. POULSON. Here is a map showing the existing Idaho Power Co.'s lines, and then this map also shows the proposed lines contained in this bill; does it not, Mr. Gale?

Mr. GALE. Yes, sir; and in this case I used a photostatic copy of the map showing in the Bureau Report—Minidoka project north-side pumping division—opposite page 84, and have drawn on there in red the lines of our company. Those which are in operation at the present time are the solid lines, and those which will be in operation before the next pumping season are dotted lines on this map which you have.

Mr. POULSON. Can you have prepared for the record this same map except that the color lines would be designated in some way to show the difference between the proposed lines of the Bureau of Reclamation, the existing lines of your company, and the proposed lines that you will have in by the next irrigation season?

Mr. GALE. Yes, sir.

Mr. POULSON. So that that could go into the record. It should not be in color, but it should be so designated that in reading the record one could look at this map and understand your testimony.

Mr. GALE. Yes, sir, I believe it can be done.

Mr. MURDOCK. If you can arrange that, it would be understandable and helpful in the record.

Mr. GALE. I will have it drawn in Idaho and send it to the committee. (The map is inserted facing p. 192.)

Mr. MURDOCK. The different types of lines, however, must be designated in black and white so that they can be reproduced in the record.

Mr. GALE. Yes; I understand the problem of reproduction in the record.

Mr. MURDOCK. Yes, sir; that is right.

Mr. GALE. Yes, sir; because this is in color and would not do.

I merely point this out because of the fact that before the next irrigation season comes around, our company will have approximately 100 miles of transmission and distribution lines in this area, most of it included in units A and B of this project [indicating], and an investment of approximately half a million dollars because of the fact that the load has grown here in those various places to the point where it is necessary to install a substation on this 138,000-volt line at this point, 7 miles due north of Paul, the substation will be 10,000-kilowatt capacity. That substation is being built now, or it will be built in a week or 10 days.

Mr. POULSON. For instance, up there at Clawson and the other places there were no existing facilities there owned by the Bureau of Reclamation to serve those customers?

Mr. GALE. No, sir; that is a sagebrush plain. With no irrigated land in this area up here at the time Mr. Clawson put down his first wells, there were no irrigation wells in the area, there were no inhabitants there, and there was no irrigated land to be farmed.

Mr. POULSON. Who owned the Minidoka plant?

Mr. GALE. The Minidoka power plant is owned by the Bureau of Reclamation. I believe title rests in the United States, although the irrigators have paid for it.

Mr. POULSON. Have these men who wanted to get power out of that Minidoka plant ever applied to the Bureau of Reclamation for that power?

Mr. GALE. Yes, sir. When Mr. Clawson first wrote us he attached a letter from, I believe it was signed by, Mr. Harold Nelson, to the effect that the Bureau would be unable to serve them from their plant.

You see, for the past several years their plant has been operating at full capacity and our company has been making up the deficiency from our system through this transmission connection that you see here from our 138-kilovolt transmission line to the Minidoka power plant [indicating]. That was the major reason for the original installation of the Minidoka 138,000-volt line and the 138 to 33,000-volt substatinn, so as to be able to draw firm power from our system and peaking power from our system, and deliver any dump power they might have onto our system. So, when he applied for service, they said, as I recall the letter——

Mr. POULSON. Do you have that letter or a copy of it, Mr. Gale?

Mr. GALE. Yes; I think I have. They said that they did not have the power and suggested that he apply to the Idaho Power Co. for service, and that is what he did, and we worked out a contract with him whereby he financed this first transmission line, this line that runs in that direction northwest diagonally across unit B from the Minidoka power plant to the Clawson tract [indicating], about like that [indicating].

Mr. POULSON. That shows on the map which you are preparing for the record?

Mr. GALE. Yes; that is that diagonal line there [indicating]. That line was not constructed as a heavy line. It was constructed as a light line to take care of foreseeable requirements that he was quite sure

he would need, some 2,500 horsepower. Last season he exceeded the 2,500 horsepower and applied for additional power, and at that time we made a contract with him based on the installation of a substation right there north of the town of Paul [indicating], and that is the arrangement we now have with him, but to complicate the situation, these other individuals saw his success and took up these various school sections which Mr. Clifton referred to, and applied to us for service.

Since the first pumping season was handled by a contract for the use of the substation between the Bureau of Reclamation and Mr. Clawson, additional power could not be served to other individuals, so the Bureau suggested that the 1949 pumping season contract for the use of their Minidoka substation be made with the Idaho Power Co., so that additional service could be rendered to these other individuals who were requesting it.

Mr. POULSON. With some of these policies I have not been at all in accord, for instance, where you permit and encourage, and, in fact, practically force private power companies to go into an area and then later want to run them out of business. Can you furnish the committee with a copy of that letter which was written to Mr. Clawson and the others requesting that they take it up with the Idaho Power Co.?

Mr. GALE. Yes, sir. This is the letter which was attached to Mr. Clawson's request for service.

Mr. POULSON. I ask that it be made a part of the record at this point, Mr. Chairman.

Mr. MURDOCK. This letter is dated August 20, 1947, and without objection it may be made a part of the record at this point.

(The letter referred to is as follows:)

DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Region I, Boise, Idaho, August 20, 1947.

MR. JULIAN CLAUSSEN,
Consolidated Holding Co.,
Salt Lake City, Utah.

DEAR MR. CLAUSSEN: Since our recent conversation relative to the furnishing of power for pumping on your land adjacent to the Minidoka project, I have investigated further into the possibility of supplying your needs over the Minidoka transmission system.

As you are aware, the output of the Minidoka plant is used during the summer in supplying the pumping requirements on the project and such surplus energy as is available after the pumping requirements have been met is distributed for general power use on the project.

The Bureau has an interconnection with the Idaho Power Co. at the Minidoka plant which is limited to 10,000 kilovolt-amperes by reason of the transformer bank which connects the Idaho Power Co.'s 132-kilovolt transmission line with the project's 44-kilovolt transmission network. In the event of any curtailment of the Minidoka plant, the deficiency must be made up by energy deliveries from the power company through this transformer bank, and should trouble develop within the plan, the entire demands of the project would have to be served through a 10,000-kilovolt transformer bank. While at times there is a small amount of transformer capacity available in this bank, we do not consider it possible to serve your load over our system because the project's pumping requirements are of primary importance in our operations.

I regret that there is no way in which the Bureau's facilities could be made available to you for temporary use and trust that you will be able to secure service from the Idaho Power Co.

Yours very truly,

H. T. NELSON,
Assistant Regional Director.

Mr. MURDOCK. May I ask you, did the initial development of the Clawson tract await your bringing power to the tract, or did he have local power?

Mr. GALE. No, sir, he did it in this way; without applying to anyone insofar as I know, for power, Mr. Clawson went ahead and put down the first two wells, and he tested the first well, he told me, for 72 hours with Diesel equipment, and that the pumping from the first well had no effect on the water level of the second well less than a mile away. Therefore, he assumed that he had a good firm supply of water. It was after that, as I got the story from him, that he applied to the Bureau of Reclamation for power.

Now, the acreage of land has been discussed here somewhat. The actual record is that Mr. Clawson has 4,500 acres of land under irrigation in that area there [indicating], and three other individuals have 1,200 acres under irrigation in that unit B, and we have applications for another 640 acres which we have to meet by the 25th day of this month. Eventually those five sections of land totaling some 3,200 acres will be all watered, I am told. They have drilled wells of sufficient capacity to supply a few sections, and are drilling additional wells as they need them.

Mr. SANBORN. Mr. Clawson has about 20,000 acres.

Mr. GALE. I do not know exactly what his holdings are, but in general they are those extending on over north of the Union Pacific Railroad, up in there [indicating], and then he has applied for service for some land which is approximately, I would say, 5 miles west of Paul and 7 miles north. I do not know the exact extent of his holdings.

Mr. SANBORN. Mr. Chairman, I have a letter here from Mr. Clawson asking me to appear before this committee and present certain points for him, and since Mr. Clawson has written this letter to me requesting that, I would like to now be able to read it into the record.

Mr. MURDOCK. Yes; we would be glad to hear it, Mr. Sanborn.

Mr. SANBORN. It is addressed to Representative John Sanborn, House of Representatives, Washington, D. C., and is dated August 6, 1949.

MY DEAR CONGRESSMAN SANBORN: According to the newspapers a congressional hearing is to be held in Washington, August 8, on the Minidoka pumping extension. We, who discovered this water, drilled the first wells and placed the first 4,250 acres under ditch with ground water, are greatly concerned by this move.

I would have attended this hearing but we are just starting harvest and to realize the fullness of a year's work demands my presence here.

Would you be interested in attending this meeting, since it appears to present problems vital to the future of Idaho agriculture. If you can, would you present the following points for the committee's consideration:

More than 80 years ago the Bureau of Reclamation selected the best lands in this area and withdrew them from entry, stating that there was water in American Falls Dam for it. Now it proposes to abandon that 80-year policy, and so far as 64,000 of the 77,000 acres are concerned, will follow the procedure and pattern that we have established by drilling for ground water.

To do this with Government money would be commendable had not the solution already been found by private capital, and there is private capital ready and willing to do the job that the Bureau is now proposing to perform.

Already three State sections, scattered over the lands withdrawn from entry by the Bureau, have been sold (one for as much as $50 per acre in the brush). They have been cleared, wells have been drilled, and they are now being irrigated into productivity without any Government money or assistance.

Of course, the cry that this land is to be saved for the veterans will be heard, but being a veteran myself, and I am informed that two of the other three sections sold by the State, are being developed by veterans, all we ask is that the land be opened for entry and let the veteran have his chance along with any other citizen who is willing to come out on the lava beds and sweat the sagebrush out of the soil, so that their land may be free from the "enslavement policy" of the Bureau. Their specialists have already sought our cost, yields, etc. in an effort to build their case to support these policies.

In any case may I, as a taxpayer and one who has already accomplished what the Bureau hopes to do, urge that before the committee approves the plan of development, a meeting be held locally, so that the plan may be submitted for consideration of those local citizens who have had the experience and know the practical solution for such problems.

At such meeting, it could be ascertained to what extent private capital would be willing to come in and do the job the Bureau is proposing.

Trusting that I have not imposed upon you too much in the above request, and with kindest personal regards, may I remain

Yours sincerely,

JULIUS CLAWSON, *President.*

Mr. GALE. I have just one more point, Mr. Chairman. Our company, as I believe you probably realize, is involved in this project in several different ways, one being that it could possibly injure our water rights in Hagerman Valley, and the other one being that we have a contract with the Bureau of Reclamation concerning the American Falls water and the American Falls power plant, and this bill cancels our 1934 agreement with the Bureau of Reclamation whereby for the past 15 years we have transmitted power for the Bureau from their plants and from one to the other, and also from their plants to various irrigation users scattered over southern Idaho.

The other point that affects us is the one which we just discussed, I refer to the fact that we have an investment there, and that it is going to continue to grow, and we cannot stop it because we are a public utility and must serve those who request service.

I agree that it is a difficult problem, but I wish to point out the fact that the price at which the Bureau of Reclamation proposes to deliver service to these pumps is only slightly below the Idaho Power Co. regular irrigation rate, and also that if the ad valorem taxes which our company would pay in that area were considered, approximately $40,000 a year, if they were taken into consideration, I believe there would be little or no difference between the proposed Bureau rate and the Idaho Power Co. rate at which we are serving these individuals now pumping in that area.

Naturally, our major interest is the protection of the investment of our stockholders. I believe that is the reason why I am here, and we have, as I said before, 3,000 stockholders located in southern Idaho who have invested several millions of their savings in our company.

I thank you for the opportunity to appear before this committee.

Mr. D'EWART. You spoke about a contract that would be canceled by this legislation. Would you explain a little more about where that is in the bill, and what happens?

Mr. GALE. It is in there by reference, when they include these various reports: Financial Study of Proposed Completion of American Falls Power Plant. Here is what happened to go back to the beginning. Long before there was an American Falls Reservoir, the Idaho Power Co. had a power plant and dam at the site. We had already purchased flowage rights for increasing the height of that dam, and all of those rights, together with a couple of power plants, and one

thing and another are transferred to the Bureau. That is what is referred to in here as the 1923 contract.

In 1934 there was a water shortage throughout the area and some water under the 1923 contract was passed down the river to go through some of our downstream power plants. We agreed with the Bureau of Reclamation not to pass that water down the river, but to hold it for storage for irrigation uses, and to transmit power for the Bureau of Reclamation [indicating], and that was the time when this Minidoka substation was built, shortly thereafter, and that is the 1934 agreement whereby we have taken Black Canyon irrigation power, which is away down the valley from here [indicating], and transmitted it for them and have taken as payment dump power from this Minidoka plant, and from Black Canyon plant where they could not use it.

That agreement is canceled by this bill, and another agreement will have to be entered into for water conservation. There are other problems which will have to be considered, and while I am on my feet I wish to point out what I believe to be an error in this statement here.

Mr. D'EWART. When you say "this statement," you refer to the financial study of proposed completion of American Falls power plant?

Mr. GALE. Yes, sir.

Mr. D'EWART. Give us the page to which you refer.

Mr. GALE. On page 8 they show certain losses which would occur in the operation of the Shoshone Falls and the Twin Falls power plants. The statement is to the effect that those are the only two plants of the Idaho Power Co. which would be affected, and that is in error, because it would also affect the upper Salmon power plant, the lower Salmon power plant, and the Bliss plant, and the loss of energy as near as we can estimate it roughly is about 90 percent more than is shown here, that, I believe, is the contract which Mr. Stinson referred to last in his statement, and which will have to be renegotiated in some way to take care of our loss in some manner.

Mr. MURDOCK. Thank you, Mr. Gale. Unless there are further questions, I think it might be well for us to hear now from the other representative of local power, Mr. George R. Corey.

Mr. GALE. Thank you.

STATEMENT OF GEORGE R. COREY, VICE PRESIDENT OF THE UTAH POWER & LIGHT CO., SALT LAKE CITY, UTAH

Mr. COREY. Mr. Chairman, I shall be very brief. I have a written statement which I shall read into the record, and then I will have, perhaps, one or two additional remarks to make.

Mr. D'EWART. Mr. Corey, would you indicate on the map where the Utah Power & Light Co. enters into this picture? We have seen that with respect to the Idaho Power Co., and we would like to have it for the Utah Power & Light Co.

Mr. COREY. The Idaho Power Co. serves that area with large transmission lines, extending from Pocatello westward, down through Hagerman Valley and the Boise area to Emmett and Payette.

The Utah Power & Light Co.'s system extends from Ashton in the eastern corner of the southern part of Idaho down through Idaho Falls to Blackfoot.

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The Utah Power & Light Co.'s system extends from Ashton in the eastern corner of the southern part of Idaho down through Idaho Falls to Blackfoot.

Exhibit P

01-2064

4118 1118

State of Idaho

License and Certificate of Water Right

Water License No. R-269 /01-2064

Water District No.

Amount 1,800,000 acre feet per annum

Priority March 30, 1921

THIS IS TO CERTIFY that UNITED STATES OF AMERICA, Acting through B. E. STOUTEMYER, District Counsel U.S. Reclamation Service of Portland, Oregon, made application for a permit to appropriate the public waters of the State of Idaho, dated March 30, 1921, 19; that Permit No. R-269 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 1,800,000 acre feet per annum second feet, was issued thereunder on July 12, 1932, 19, showing that said works were completed on the 16th day of May, 19 31; and that on the 22nd day of April, 19 41,

UNITED STATES OF AMERICA

of Portland, State of Oregon, made proof to the satisfaction of the Commissioner of Reclamation of Idaho, of the right to use the waters of Snake River, a tributary of Columbia River, for the purpose of domestic and irrigation purposes, under Use Permit No. R-269 of the Commissioner of Reclamation and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the Commissioner of Reclamation of Idaho and entered of record in Volume 7 of Licenses, at page 4118, on the 9th day of July, 19 42;

The right hereby confirmed dates from March 30, 1921, 19;

The Point of Diversion is located

in the SW¼ NE¼ SW¼ NE¼, Sec. 30, Tp. 7 S, R. 31 E, B. M. Power

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 1,800,000 cubic feet per second acre feet per annum, of which amount 1,700,000 acre feet represents the rated cubical contents of the reservoir and 100,000 acre feet is the maximum annual bank storage.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated

The place where said water is used is on the lands in the following irrigation districts and on the lands of the projects of the following irrigation companies: Aberdeen-Springfield Canal Co., American Falls Reservoir Dist., American Falls Reservoir Dist. No. 2, Blackfoot Irrig. Co., Burgess Canal & Irrig. Co., Butte & Market Lake Canal Co., Corbett Slough Ditch Co., Dilts Irrig. Co., Enterprise Canal Co., Enterprise Irrig. Dist., Harrison Canal & Irrig. Co., Hillsdale Irrig. Dist., Idaho Irrig. Dist., Lenroot Canal Co., Milner Low Lift Irrig. Dist., Minidoka Irrig. Dist., New Sweden Irrig. Dist., Peoples Canal & Irrig. Co., Poplar Irrig. Dist., Progressive Irrig. Dist., Reid Canal Co., Rudy Irrig. Canal Co., Chas. D. Smith (individual), Snake River Valley Irrig. Dist., Trego Ditch Co., Utah-Idaho Sugar Co., the lands in the upper Snake River Valley are supplied by means of exchange water. The names of the canals or ditches or other works by which said water is conducted to such place of use are: Aberdeen, Martin, North Side Project, Twin Falls Canal Co., Woodville, Gooding, Blackfoot, Burgess, Butte & Market Lake, Corbett, Dilts, Enterprise Canal Co., Enterprise Dist., Harrison, Idaho, Lenroot, Milner Low Lift, Minidoka, New Sweden, Peoples, Poplar Irrig. Dist., Progressive Irrig. Dist., Reid, Rudy, Smith, Snake River Valley, Trego, Utah-Idaho Sugar Co.

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

IN WITNESS the seal and signature of the Commissioner of Reclamation, affixed at Boise, Idaho, this 9th day of July, 19 42

E. V. BERG,

Commissioner of Reclamation

(SEAL)

MICROFILMED

01-2064

State of Idaho

License and Certificate of Water Right

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The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation, affixed at Boise, Idaho, this 9th day of July, 19 42

E.V.BERG.

Commissioner of Reclamation

(SEAL)

01-2064

Exhibit Q

BEFORE THE DIRECTOR

OF THE

IDAHO DEPARTMENT OF WATER ADMINISTRATION

In the Matter of Permit Nos. 01-2041 and 01-2065 in the name of IDAHO POWER COMPANY

MEMORANDUM DECISION

On March 17, 1921, Idaho Power Company submitted Applications to the Idaho Department of Reclamation (renamed Idaho Department of Water Administration) requesting authority to divert 1200 cubic feet per second of water and to store 300,000 acre-feet of water to be used for power purposes. The water was to be diverted and stored in the S½S½ Section 30, Township 7 South, Range 51 East, B.M., in Power County for use at the proposed reservoir [illegible] and 16201/01-2041 were issued by the Department.

On June 20, 1931, the applicant submitted Proofs of Completion of Works claiming that the works had been completed as required under the provisions of Permits 16201/01-2041 and R-273/01-2065. On September 29, 1932, the Department of Reclamation informed the permits holder that it intended to reject the Proofs of Completion of Works and refuse to issue a Certificate, since a Certificate of Completion of Works had previously been issued to the United States of America, Bureau of Reclamation, for the full capacity of the reservoir constructed at the proposed site. The Department further informed the Idaho Power Company that it appeared that the Company's rights to divert and store water at that location had been waived and compensated for by contractual agreement between the Company and the United States.

In July of 1967, the Department requested that the Company review the matter and give comments prior to action being taken to cancel the permits. Correspondence was received from the Company, on November 9, 1967, asking the Department to issue the required Certificate to complete the permits and contending that Licenses should be issued.

On October 1, 1970, an Order to Show Cause why the permits should not be cancelled was issued to Idaho Power Company by the Department. On December 1, 1970, a brief was timely submitted by the Idaho Power Company setting forth, among other things, the terms and conditions of agreements between the Company and the United States.

After reviewing the files of the Department and the answer of the Idaho Power Company, the Director finds that the rights established by the Idaho Power Company, by reason of Permit Nos. 01-2041 and 01-2065, have been merged with rights granted the United States of America and that by reason of contracts and agreements entered into between the Company and the United States of America, Bureau of Reclamation, those rights are held in trust for use by the Company under the water rights of the United States at American Falls Reservoir.

The Director further finds that since the Company's rights to water at American Falls Dam and Reservoir are already covered by reason of Licenses issued to the United States of America, under Permit Nos. R-269 and 4168 and contracts between the Company and the United States of America, that Permit Nos. 01-2041 and 01-2065 are duplicate and should be cancelled. The Company has failed to submit proof that it has constructed the necessary works to divert the water and apply it to beneficial use.

Dated this 21st day of April, 1971.

R. KEITH HIGGINSON
Director

Exhibit R

SNAKE RIVER
HYDRO POWER

IDAHO POWER COMPANY

BOX 770 • BOISE, IDAHO 83701

November 9, 1967

State of Idaho
Department of Reclamation
107 State House
Boise, Idaho 83701

Attention: Mr R Keith Higginson
State Reclamation Engineer

Re: Permit R-273, 15201

Gentlemen:

Some time ago you corresponded with Mr Gale Farley with respect to the filing by Idaho Power Company of application for permits for R-273 and 15201, covering storage and use of water in American Falls reservoir.

In your letter you called the Company's attention to the fact that no certificate had been issued by your department due to the contract between the Power Company and the United States Bureau of Reclamation, despite the fact that the permits were in good standing and Proof of Completion of Works had been filed.

Idaho Power Company has carefully checked its files concerning these permits and examined the contract between the Company and the United States Bureau of Reclamation, and we do not believe that there is anything in the contract which prevents or restrains the issuance of these permits; and in fact, the contract recognized the filed rights of Idaho Power Company.

Since Idaho Power Company has complied with the statutory requirements, including the beneficial use requirements, we are hereby requesting that your department proceed to issue the required certificates and thus bring the matter to a conclusion.

Very truly yours,

H C Moore

H R Moore
Vice President

JEB:mlm

cc: James E Bruce

15341
15301

Exhibit S

IDAHO POWER COMPANY

BOISE, IDAHO

R. C. KIERSTED
SPECIAL AGENT

October 8, 1932

RECEIVED
OCT 8 1932
DEPARTMENT OF RECLAMATION

Mr. R. W. Faris,
Commissioner of Reclamation,
Boise, Idaho

Dear Mr. Faris:

In response to yours of September 29, in re Proofs of Completion of works under Storage Permit No. R273 and Use Permit No. 15,201, the following appears to me:

The Storage Permit (No. R273) contemplated construction of reservoir works to capacity of 300,000 acre feet for the storage of waters of Snake River, the Company having continuous flow rights therein at American Falls by earlier appropriations, uses and permits, all of which are in priority of all others. The Use Permit (No. 15,201) contemplated the utilization of water from the reservoir and complements the Storage Permit. It is not additional to the already-claimed waters. At the time of these initiations the Company was the holder of more than 3,000 acres of land and flowage right and more than 100 town lots along the River, acquired for reservoir right-of-way purposes. The foregoing by way of premise.

As to the sites downstream, both developed and undeveloped, referred to in the permits, no claim under either Permit No. R273 or Permit No. 15,201 for their local developments is made excepting only as they relate to the storage and use works and the storage and use works to them. The Storage Permit simply states, in effect, that the stored water will be conducted down the River and through the works constructed to the points of use under the appropriations and permits listed; while the Use Permit states, in effect, that the waters appropriated will be diverted at the various points described. The operating plants of the Company and the sites that were to be developed, each with its own independent water rights, had certain relation to the reservoir, and any provisions for storage upstream must take them into consideration, and they were so considered in the Company's plans for its own storage development, as the permits for storage and use prescribe, and became so recognized in the June 15, 1923, contract as accepted and approved by both parties and the State.

Speaking now particularly of the Storage Permit - It is in priority of any other storage right in the locality, as the records in your office disclose. It purposed the construction of dam and reservoir works according to plans. The requirement originally was that the control works be completed on or before June 21, 1926.

15201

01-20411

On June 15, 1923, the contract between United States and Idaho Power Company was entered into and was officially approved by the Commissioner of Reclamation for the State, as the records of your office show.

On September 20, 1923, the Commissioner of Reclamation, upon application theretofore made, issued Order granting extension of time for completion of works to June 21, 1931.

The Contract of June 15, 1923, between United States and the Company contemplated the construction of reservoir works by United States which would occupy and use lands and properties of the Company which the Company had intended to use for its own works. Manifestly, the two projects could not be carried on independently of one another, and the works which the Company was to install were, in effect, merged with and became a part of that done by United States for it, though on larger and much more comprehensive scale. By giving way, the Company did not waive any rights and these are, in fact, recognized by both the United States and the State of Idaho according to the contract as signed and approved. Reference is here made to Sections 4, 5 and 6 of the Contract, in the preamble, for the purview of it. Reference might also be had to Lines 74 to 87 on page 4 of the Contract; to Lines 258 to 266 on page 11; to Section 36 and to the first eight lines of Section 37, all as indicating the understanding of the parties to the contract and as approved by the Commissioner of Reclamation for the State of Idaho.

I am not familiar with the "Woodville Decree", to which you refer, but know that Idaho Power Company was not made a party in the case; and I believe, that being so, that the Company is not within the terms of such decree at the date of its issuance nor is bound by it. It is my thought that the decree, in the absence of the Company as a party in the case and without full consideration of the understanding and intent of the June 15, 1923, contract, which had the complete knowledge and approval by the State of Idaho, through its Department of Reclamation, does not deprive the Company of any of its priorities and rights as recorded, and should not here be regarded. The Company has not waived its priority or rights under Storage Permit, No. R275, nor surrendered its independence in them, and I call especial attention to Sections 30 and 32, on pages 30 and 32 respectively, of the Contract, having in mind the sanction and approval by the State.

As to the Use Permit, No. 15,201, much that has been said applies likewise to it. Its diversion works were constructed by the Company and its predecessors. With the physical works you are familiar, and their detail I need not recite. They have a cross-section of 2,923 feet and, as diversion works, are capable of carrying a great volume of water. I venture to say that they have very much more capa-

15201

01-3011

city than 9,000 c.f.s. It is my view that in determining the capacity of diversion works, the use works have no place. In a manner of speaking, they are not there - it's the diversion capacity that's in question, not the diversion and use. The water right itself, 1,200 c.f.s., relates only to its discharge out of the reservoir. It is supplemental but not additional to pre-existing rights and may be said to be a part of them, for their diversion capacity embraces its diversion capacity, and there is no duplication nor over-lapping.

I have tried to make this response brief and have not gone into detail that might illuminate the subjects more. The record, of course, is public and known to all. Everything that was done, beginning with the initiation of the rights in subject and through the transaction with United States, had the full knowledge of the State of Idaho and was sanctioned and approved; and I submit that the works under the Company permits, both for storage and for use, have been completed and that the rights acquired are independent rights of their own legal standing and not mere contract rights. It would appear to me that Certificates of Proofs of Completion, under the Statute, should issue.

I should like the opportunity of discussing the whole subject with you at your convenience, because there are, as stated, some details that should be known which the limits of a brief letter do not permit, and should appreciate a meeting with you for the purpose.

Very truly,

E. C. Kiersted,

Special Agent.

ECK:LR

15201

01-2041

Exhibit T

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER ADMINISTRATION
OF THE
STATE OF IDAHO

RECEIVED
DEC 1 1970
Department of Water Administration

IN THE MATTER OF PERMITS NO 15201/01-2041 and R-273/01-2065 in the name of IDAHO POWER COMPANY

ANSWER TO ORDER TO SHOW CAUSE

COMES NOW, IDAHO POWER COMPANY (hereinafter called "Company") and for its answer to Order to Show Cause as to why Proof of Completion of Works should not be rejected and Permits 15201/01-2041 and R-273/01-2065 cancelled, states and alleges as follows:

I

That the Company, or its predecessors, in 1901 commenced construction of generating plant at American Falls, Idaho, known as the "Island Plant." As power requirements increased, this plant was supplemented by construction at American Falls of the "West Side Plant" and, subsequently, the "East Side Plant."

That prior to June 15, 1923, the Company owned and operated a dam and the three power plants with a total of 4,040 KW generating capacity at American Falls. These plants provided the Company's entire power generation for the American Falls-Blackfoot-Pocatello area, and were a source of large potential development to serve the future power needs of southeastern Idaho.

That the Power Company was preparing to enlarge its dam and generating stations to meet the rapidly growing power demand. Its plans included a storage reservoir which would not only make possible the installation of additional power capacity at American Falls to meet local needs, but also would have served to increase the firm capacity of its downstream plants at Shoshone, Lower [illegible] and Twin Falls.

II

That the Company had made or acquired various filings and/or rights on waters of the Snake River for storage and use

01-2065

of such water for power production at its existing plants and also for its proposed plant expansion, as follows:

(a) Appropriation under Water Location by Andrew J Tarbet for 6000 cfs of the waters of Snake River on July 15, 1901, recorded in Blaine County, Idaho, in Book 4 of Water Rights at Page 266.

(b) Appropriation under Water Location by J E Brady for 2000 cfs of the waters of Snake River on August 1, 1901, recorded in Blaine County, Idaho, in Book 4 of Water Rights at Page 265.

(c) Permit No 4168 for 6000 cfs of the waters of Snake River, issued by the State Engineer of the State of Idaho to American Falls Power Company on Application filed September 3, 1908.

(d) Permit No 14067 for 4600 cfs of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to Idaho Power Company on Application filed April 7, 1919.

(e) Permit No 13947 for 1500 cfs of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to E C Kiersted on Application filed December 26, 1918.

(f) Permit No 14909 for 500 cfs of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to Idaho Power Company on Application filed June 25, 1920.

(g) Appropriation under Water Location by I B Perrine for 1000 cfs of the waters of Snake River on November 1, 1901, recorded in Lincoln County, Idaho, in Book 1 of Water Rights at Page 241.

(h) Appropriation under Water Location by Arturus Z Conrad for 1000 cfs of the waters of Snake River on September 13. 1902, recorded in Lincoln County, Idaho, in Book 1 of Water Rights at Page 251.

(i) Permit No 14881 for 1000 cfs of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to Idaho Power Company on Application filed August 9, 1920.

(j) Permit No 13948 for 5000 cfs of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to E C Kiersted on Application filed December 26, 1918.

(k) Permit No 3685 for 6000 cfs of the waters of Snake River, issued by the State Engineer of the State of Idaho to Fentress Hill on Application filed May 11, 1908.

(l) Appropriation under Water Location by Joseph H Hutchinson for 10000 cfs of the waters of Snake River on January 17, 1900, recorded in Owyhee County, Idaho, in Book 3 of Water Rights and Millsite at Page 750.

01-3665

(m) Appropriation under Water Location by Joseph H Hutchinson for 10000 cfs of the waters of Snake River on May 4, 1900, recorded in Owyhee County, Idaho, in Book 3 of Water Rights and Millsites at Page 761.

(n) Permit No 14362 for 4000 cfs of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to Idaho Power Company on Application filed July 29, 1919.

(o) Permit No 15201 by Idaho Power Company according to Application No 21476 filed on March 17, 1921.

(p) Permit No R-273 by Idaho Power Company for storage of 300,000 acre feet per annum of the waters of Snake River filed on March 11, 1921 and approved on June 28, 1921.

III

This was a period of rapid growth in southern Idaho, and the need for additional water for irrigation development was increasing. American Falls was selected by the Bureau of Reclamation as an ideal site for a large and economical reservoir for the storage of water for irrigation use. The United States of America, acting through its Secretary of the Interior, and pursuant to appropriate acts of Congress determined to build a large irrigation storage reservoir at American Falls, using as a part of its reservoir land owned by the Company. This reservoir would require the destruction of two of the Company's plants (West Side and Island plants) and would prevent the Company from developing its own storage reservoir for power production. The Company already owned much of the necessary lands and flooding easements, which it had purchased and obtained for its own reservoir development.

IV

That in order to enable the United States of America to construct the irrigation storage reservoir, the United States and the Company developed a plan under which the Company reserved its existing water rights, and conveyed the necessary portions of its real property and easements to the United States. The Company

01-2065

retained its East Side generating station with its appurtenant diversion dam, and was guaranteed by the United States the right to the amount and time of use of its reserved water rights. To effectuate this plan a contract was entered into between the United States and the Company on the 15th day of June, 1923, a copy of which is hereto attached as Exhibit A and is hereby made a part of this answer.

V

That under the said contract the Company's rights to storage in the reservoir to be constructed by the United States to the extent of the 300,000 acre feet covered by Permit No R-273 issued by the Commissioner of Reclamation of the State of Idaho under the date of June 28, 1921, were preserved, defined and specifically provided for as follows:

> "In part consideration for the rights and property to be conveyed to the United States by the Company, and as a part of the cost of the proposed development at American Falls the United States grants to the company and the company shall be entitled to the perpetual use of 45,000 acre-feet of storage capacity in the reservoir to be constructed by the United States, such capacity to be for storing the water reserved to the company, and the water referred to in the last sentence of Paragraph 10, the company's right to such storage capacity to be on an equal basis in all respects, except as otherwise provided herein, with other primary storage capacity rights in the reservoir, as defined in the contracts between the United States and the Irrigation Companies and Districts cooperating with the United States in the construction of said reservoir, a form of which contract is attached hereto and marked Exhibit 'C'," (paragraph 16, pp 17 and 18, Exhibit A)

> "Between October 1st of any year and June 10th of the following year, the company shall have and is hereby granted for the purpose of regulating and controlling the water reserved to the company under Paragraph 19 hereof, and the water which may be acquired under the last sentence of Paragraph 10, a secondary right to use not to exceed 255,000 acre-feet of storage capacity in the reservoir when such capacity is not then required and not being used by the owners of irrigation rights to the use of such capacity, but shall have no further right to use any part of said 255,000

61-3015

acre-feet of capacity or any water stored therein after the reservoir is first filled each season, and the company shall in any event release on April 1st of each year all right and claim to such capacity and water stored therein, except 60,000 acre-feet, and shall release all right and claim to the remainder, if any, on June 10th of each year." (paragraph 18, p 19, Exhibit A)

That said contract specifically provided that the Company was not surrendering, or in any way disposing of its existing water rights but was only permitting the United States to use them in connection with its American Falls Reservoir, subject, however, to the Company's reserved rights as follows:

"WHEREAS the company has at American Falls water filings prior to the American Falls filings of the United States sufficient to embrace the entire amount of water reserved to the company under this contract." (paragraph 6, pp 2 and 3, Exhibit A)

"(d) All the company's water rights, appropriations water filings and permits, at American Falls, or used or intended to be used in connection with the company's power plants and proposed plants at American Falls, except the rights, whether primary or tertiary, expressly reserved to the company, as hereinafter set out. The water rights of the company transferred to the United States for use for power purposes shall be considered as impressed with a right in the United States to change the use of such water from power to irrigation or to store the same for irrigation whenever the Secretary of Interior shall decide that such water is required for irrigation purposes. But it is expressly agreed and understood that the water rights and rights to the use of water which it is herein agreed that the Company shall have are reserved out of its existing appropriations and rights as independent rights under its own filings and appropriations and of the dates of priority to which the Company is entitled under such appropriations and are not to be considered as mere contract rights under contract with the United States." (paragraph 9(d), p 11, Exhibit A)

"It is the intent of this agreement that all power rights at American Falls except those granted to the United States herein shall be reserved to the company and that the deeds and conveyances by the company to the United States may contain a reservation in favor of the company of the rights reserved to it under the provisions of this agreement." (paragraph 30, p 30, Exhibit A)

VI

That as a part of the plan for the American Falls reservoir the United States had applied for and received from the Commissioner of Reclamation of the State of Idaho, under the date of March 30, 1921, Permit No R-269 for the storage of 1,700,000 acre-feet in said reservoir and Permit No 15134 for direct diversion of 8,000 second feet in connection therewith.

That the existence of the Company's permits and water rights described in paragraph II, supra, were known to the parties at the time of the execution of the contract of June 15, 1923 (Exhibit A hereto), and the contract provisions referred to in paragraphs IV and V, supra, for protecting the Company's right to 300,000 acre-feet of storage covered by its Permit R-273 contemplated that said storage water was included in and formed a part of Permit R-269 and would be provided to the Company from waters stored under Permit R-269.

That in fact, while all the Company's reserved rights were considered in the contract (Exhibit A hereto), the contract specifically provided that said rights were reserved and were "* * * not to be considered as mere contract rights * * *."

VII

That the said reservoir was subsequently constructed and thereafter the United States made all necessary proofs required by the laws of Idaho and proper licenses have been issued to the Secretary of the Interior for the waters covered by Permit Nos R-269 and 15134.

VIII

That in addition to the aforementioned contract with the Company, the Secretary of the Interior entered into numerous contracts with irrigation districts, canal companies and individuals [illegible] available to them for irrigation use on [illegible] specific quantities of storage space and

the waters annually stored therein, and that at the present time there are such contracts outstanding covering substantially all of the capacity of said reservoir.

IX

That by operation of law the Secretary of the Interior holds the water available in American Falls Reservoir under Permit Nos R-269 and 15134 as trustee for the Company and all other contract holders. The Company has continuously applied to a beneficial use its rights in said stored water, as have all other contract holders; and the Company and all other such contract holders are the equitable owners of the right to so use these waters.

X

That a decree was entered in the District Court of the United States for the District of Idaho, Eastern Division, on June 25, 1929, in an action entitled Woodville Canal Co, Plaintiff, versus Clark and Edwards Canal and Irrigation Co, et al, Defendants, adjudicating water rights in Snake River at and above Milner Dam, including those at American Falls. That the numerous parties to said action included many of the water users on the river who claimed rights in American Falls Reservoir, together with the Secretary of the Interior. In such action a stipulation was entered into which was incorporated in the decree which read in part as follows:

> "It is further stipulated and agreed that there shall be decreed in the above entitled cause of action, to the Secretary of the Interior of the United States, and his successors in office, for use upon the various projects which have heretofore or may hereafter become entitled to the same by reason of contracts with the United States therefor, the water filed upon by the United States in connection with the construction of the American Falls Reservoir under permit number 15134, and reservoir permit number R-269, under date of priority of March 30th, 1921, the amount of water to be decreed to the Secretary of the Interior of the United States and his successor in office for use under said date of priority of March 30th, 1921, to be One Million Seven Hundred Thousand (1,700,000) acre-feet per annum for storage in the

American Falls Reservoir and Eight Thousand (8,000) second feet for direct diversion. It is understood and agreed that paragraph two hereof does not apply to the said rights of priority of March 30, 1921, provided for in this paragraph or the rights decreed in the Foster and Rexburg decrees."

"It is stipulated and agreed that the rights of contract holders and any others beneficially interested, now or hereafter claiming or having storage reservoir rights in American Falls Reservoir shall not be affected or determined by the decree to be entered in this action, as to the use to be made of the waters decreed, under such decree to the Secretary of the Interior under permits described in paragraph No. 4, of this stipulation, the same being permits No. 15134 and R-269."

and concerning which the decree provided:

"Now therefore, the said stipulation is hereby approved and confirmed by the Court and adopted as a part of this decree, * * *."

WHEREFORE, the Company hereby requests that the Director of the Department of Water Administration enter an order finding (a) that all of the rights of the Company covered by Permit Nos R-273 and 15502 have been merged into rights granted to the Secretary of the Interior in Permit Nos R-268 and 15134; (b) that the Secretary of the Interior holds and maintains the rights under said permits as trustee for the Company of all of the rights covered by Permit Nos R-273 and 15502; and (c) that in accordance therewith no further action need be taken with respect to Permit Nos R-273 and 15502.

Dated this 1st day of December, 1970.

R P PARRY
Twin Falls, Idaho

JAMES E BRUCE
Boise, Idaho

Attorneys for Idaho Power Company

Exhibit U

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION
Statehouse – Annex 2
Boise, Idaho 83707
(208) 384-2215

R. Keith Higginson
Director
Water Rights Administration
Water Resource Investigations
Dam and Reservoir Safety
Water Well Drilling
Flood Plain Management
Irrigation and
Flood Control Districts

IN THE MATTER OF CANCELLATION OF PERMIT)
TO APPROPRIATE THE PUBLIC WATERS OF THE)
STATE OF IDAHO NO. 15201/01-2041)
IN THE NAME OF Idaho Power Company)

ORDER OF CANCELLATION

WHEREAS, the permit holder has failed to submit adequate proof of completion of works due June 21, 1931; and,

WHEREAS, on October 1, 1970 notice was sent to the holder of said permit to appear before the Director of the Department of Water Administration on or before December 1, 1970 to show cause why said permit should not be cancelled; and,

WHEREAS, the holder of said permit has failed to comply with the requirements of said permit and has not shown adequate cause why such permit should not be cancelled.

IT IS THEREFORE ORDERED and Permit 15201/01-2041 is hereby CANCELLED.

Dated this 22nd day of April, 19 71.

R. KEITH HIGGINSON
Director

01-2041

Exhibit V

Calendar No. 212

93D CONGRESS } SENATE { REPORT
1st Session } { No. 93-223

AUTHORIZING THE REPLACEMENT OF THE EXISTING AMERICAN FALLS DAM

JUNE 15, 1973.—Ordered to be printed

Mr. CHURCH, from the Committe on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 1529]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 1529) to authorize the Secretary of the Interior to enter into agreements with non-Federal agencies for the replacement of the existing American Falls Dam, Upper Snake River project, Idaho, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

(1) Change the reference to the "Upper Snake River project" to read "Minidoka project" wherever it appears.

(2) On page 1, line 6, delete the word "district" and insert instead the words "present spaceholders".

(3) On page 2, line 10, delete "project," and insert the following:

> project: *Provided*, That the design, construction and operation of the replacement dam shall not result in a maximum water surface elevation at the dam higher than El. 4354.5 feet, and: *Provided, further*, That the Secretary shall continue the program of prevention of and compensation for erosion related to the reservoir.

(4) On page 2, revise lines 23 through 25 to read as follows:

> * * * and the Secretary shall be a party to said contracts and the delivery of water to the spaceholders shall be contingent upon the execution of such contracts and the fulfillment of the obligations thereunder: *Provided*, That * * *

(5) On page 3, line 21, after the word "shall" insert the following phrase: "be approved by the Secretary so long as it does".

(6) On page 3, lines 23–25, amend Sec. 5 to read as follows:

> SEC. 5. Construction of the replacement dam shall not be initiated until the Secretary has approved the designs and specifications of the construction of the dam and of the proposed operation of the dam and reservoir. Preliminary design plans shall be submitted to the Secretary by the constructing agency. The Secretary shall approve said plans, or must promptly set forth specific objections to the preliminary design plans. If the parties cannot agree, said specific objections shall be submitted to binding arbitration by an engineering consulting board. The Secretary shall select one member of the board, the constructing agency shall select one member of the board, and the two members so selected shall select a third member. The consulting board's decisions on the specific engineering questions shall be binding on the Secretary and the constructing agency. The constructing agency shall then prepare final designs and specifications. Costs incurred heretofore and hereafter by the Secretary in reviewing such designs, specifications, plans and construction shall be nonreimbursible and such amounts as are required are authorized to be appropriated for this purpose. The Secretary is authorized to accept fund advances from the beneficiaries if necessary to avoid delays occasioned by appropriations and to make compensation by payment or credits.

(7) On page 4, lines 2 and 3, delete the word "conservation" and insert instead the word "enhancement"; and on page 4, line 6, add the following language:

> In addition, specific facilities for public recreation may also be provided in accordance with the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), as amended (16 U.S.C. 460, *et seq.*).

(8) On page 4, lines 7 through 11, amend Sec. 7 to read as follows:

> SEC. 7. There is hereby authorized to be appropriated for construction of specific facilities for public recreation and fish and wildlife enhancement the sum of $400,000 (July 1972 prices) plus or minus such amounts, if any, as may be required by reason of the changes in the cost of construction work of the type involved therein as shown by engineering cost indices. There are also authorized to be appropriated such funds as may be necessary to meet the prorated construction cost apportionable to the irrigation storage rights of the Michaud Division of the Fort Hall Indian Reservation for space in the reservoir behind the American Falls Replacement Dam and such cost shall be subject to the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 368a). There are also authorized to be appropriated such funds as are required for the operation and maintenance of the dam and related facilities.

(9) On page 3, line 12, delete "defer" and insert "defray".

(10) On page 2, line 11, delete "Sec. 2" and insert "Sec. 2(a)", and on page 2, after line 16, insert the following language:

> (b) The constructing agency shall: (i) include as a part of the project, a river crossing meeting the then current Department of Transportation standards for Federal-Aid secondary highway two-lane traffic, which crossing shall be located on top of the replacement dam or immediately downstream from the dam, and which crossing shall be financed by State, Federal and private funds, or any combination thereof as the parties deem appropriate; and (ii) coordinate the design of project crossing to allow the inclusion of an additional two lanes, which additional two lanes shall be the responsibility of the Idaho Department of Highways and which may be funded with State or Federal funds.
>
> (c) The plans and specifications for the construction of the dam shall require that an adequate two-lane, two-way crossing shall be maintained at or near the site of the dam during construction.

(11) Amend the title of the bill to delete the phrase "Upper Snake River project" and insert instead the phrase "Minidoka project"

PURPOSE OF THE MEASURE

The purpose of this measure, which was introduced by the Senators from Idaho, is to authorize the Secretary of the Interior to enter into appropriate agreements to permit the water-users to arrange for the financing and construction of a replacement for the existing American Falls Dam, which has become unsafe as a result of deteriorating concrete. The replacement dam would be acquired by the Secretary and operated as a feature of the existing Minidoka Reclamation project.

BACKGROUND

The existing American Falls Dam is located on the Snake River in Southern Idaho. The dam was constructed by the Bureau of Reclamation in 1927 as a feature of the Minidoka project. Physical data on the existing project are as follows:

Existing dam

Type—composite, concrete gravity center section with earth-fill embankment wings
Height—94′
Crest length—5,227′

Reservoir

Active capacity (unrestricted)—1,700,000 acre feet
Surface area—56,100 acres
Shoreline—100 miles

Minidoka project

Irrigable area—1,149,000 acres
Number of irrigated farms—19,900

Gross crop value (1971)—$154 million
Total storage dams—5
Total storage capacity—2,784,600 acre feet.

A chemical reaction between the aggregate and the cement has led to gradual deterioration of the structure. The Bureau has determined that the dam is no longer structurally competent and has imposed restrictions upon the maximum water level in the reservoir.

Storage in the reservoir is presently limited to less than 65 percent of its usable capacity. Greater restrictions will be necessary as the deterioration of the dam advances. The reservoir contributes nearly half the usable storage capacity in the Upper Snake River System, and provides irrigation water supplies to about 900,000 acres of land. Constraints on operation will pose serious threats to the agricultural economy of the area and to the recreation, fish and wildlife, flood control, and hydroelectric power functions served by the reservoir system.

Furthermore, the roadway on the crest of the existing dam is the only crossing within an 80 mile reach of the river. The outdated, 17-foot roadway must carry over 3,000 cars per day including heavily loaded farm produce trucks and agricultural equipment.

The Bureau of Reclamation has conducted a study to investigate the possibilities for replacement and rehabilitation of the American Falls Dam. The Bureau's Special Report dated December 1972 found that the replacement of the dam in the proximity of the present site would be preferable to rehabilitation. The Secretary of the Interior has made no recommendations to the Congress pursuant to the report.

In the interest of expediting completion of a replacement dam and in recognition of Administration reluctance to recommend conventional construction under the reclamation program, the spaceholders (water-users entitled to storage space in the American Falls reservoir) have explored alternative means for financing and carrying out the replacement of the dam.

The Senators from Idaho introduced two alternative measures for the replacement of the dam. One measure, S. 1528, would authorize the Secretary of the Interior to construct, operate and maintain a replacement dam having the same capacity reservoir and operations as the existing American Falls Dam. The financing of the replacement would be in accordance with conventional reclamation policies. The other measure, S. 1529, which is reported on herein would authorize an alternative financing approach proposed by the water-users in the interest of expediting completion of a replacement dam. In this alternative, an appropriate water-users organization would be authorized to construct the dam, using private financing, and transfer ownership to the Secretary for operation and maintenance as a project feature. The water-users agency would be authorized to contract with an electric utility for the use of falling water at the dam for hydroelectric power generation to help defer the costs of constructing the dam. The Idaho Power Company, which is a spaceholder in the reservoir and which owns and operates a powerplant below the existing dam, has expressed its interest in such a contract.

The Subcommittee on Water and Power Resources held a hearing on both measures on May 10, 1973. The Department of the Interior recommended enactment of S. 1529, the measure reported on herein and did not support the enactment of S. 1528, the alternative measure.

The Department recommended a number of amendments to S. 1529, most of which were adopted by the Committee as explained below. The Subcommittee considered the measures in executive session on June 11 and recommended to the Full Committee that S. 1529 be reported favorably to the Senate with amendments.

SECTION-BY-SECTION ANALYSIS

The provisions of S. 1529 as reported to the Senate are as follows:

Section 1 authorizes the Secretary of the Interior to enter into agreements with the American Falls Reservoir District, or other appropriate entity representing the spaceholders (the constructing agency), to provide for the construction of a replacement for the American Falls Dam.

The District would contract with Bechtel Engineers-Constructors to design and construct a replacement dam utilizing portions of the existing structure and maintaining the maximum unrestricted reservoir capacity of the original dam. The cost of the replacement dam and highway crossing, estimated at $18,491,000 (1973 prices), would be financed by the District through bond issues. The Secretary would take title to the dam upon completion of construction and would operate and maintain it as a Federal dam and a feature of the existing Minidoka Reclamation project.

Section 2 provides for the protection of the existing rights to storage capacity in the American Falls Reservoir and reaffirms existing contract obligations of the spaceholders to the United States. Current erosion control programs on the reservoir banks would be continued by the Secretary. An adequate river crossing will be provided as a part of the project as discussed below.

Section 3 authorizes the constructing agency to enter into repayment contracts with the spaceholders as necessary to recapture the costs of the replacement. The Secretary is to be a party to these contracts and they shall be consistent with existing contracts. The Secretary is granted authority, however, to amend existing contracts, if necessary, to bring the total repayment obligation of a spaceholder within the spaceholder's repayment capacity.

Section 4 authorizes the constructing agency to enter into a contract to lease the falling water from the dam for hydroelectric power production. The Idaho Power Company has expressed a willingness to construct a 100-megawatt powerplant in conjunction with the replacement dam and to pay, through a "falling water" contract, up to $19,000,000, plus interest charges, to assist in retiring the bond issue.

The Secretary will review the "falling water" contract to insure that it will not impair the efficiency of the project to serve the other purposes of the Minidoka Reclamation project.

Section 5 provides that the Secretary must approve the designs and specifications of the dam. The costs of the review are made nonreimbursible; however, the Secretary is authorized to accept fund advances from the constructing agency if necessary to avoid delays in the review due to lack of appropriated funds for the purpose. The Secretary is authorized to reimburse the constructing agency for such advances by direct payment or credits against debts to the United States.

An arbitration procedure is established to resolve points of techni-

cal disagreement which may arise between the Secretary and the architect-engineer as a result of the review of designs and specifications.

Section 6 provides authority for the Secretary to provide specific public recreation and fish and wildlife enhancement facilities in connection with the replacement dam. A plan for such measures, including nesting islands for geese, fishery enhancement measures, reservoir access, and recreation areas was developed in connection with the Bureau of Reclamation's studies of a replacement dam. The costs of these measures will be shared by an appropriate local entity under the provisions of the Federal Water Project Recreation Act (79 Stat. 213).

Additional recreational development at the reservoir also might be accomplished by State and local entities under the provisions of the Land and Water Conservation Act (78 Stat. 897, as amended).

Section 7 authorizes appropriations in the amount of $400,000 to provide for the costs of public recreation and fish and wildlife facilities. Funds in the amount required are also authorized to be appropriated to finance the portion of the costs of the dam replacement associated with the share of reservoir storage space owned by the Fort Hall Indian Reservation.

COMMITTEE AMENDMENTS

The Committee amended the bill in a number of respects to reflect recommendations made by the Department of the Interior and points raised by local interests during the hearings. The texts of the amendments are set forth by number at the beginning of this report. The following explanations are numbered accordingly:

(1) The Department of the Interior recommended the retention of the name of the existng Minidoka project in place of the designation Upper Snake River project which has been used on recent Department reports.

(2) This amendment was recommended by the Department. It would providee latitude for the spaceholders, including those outside of the American Falls Reservoir District, to be represented by an appropriate entity of their choosing.

(3) The Department recommended language to specifically provide that the replacement dam would provide for a maximum reservoir level no higher than that provided for by the existing dam. There is no intention to increase the size of the reservoir, and the elevation of 4354.5 set forth in the amendment is the maximum water surface elevation wihch was provided by the existing dam.

The Department also recommended a proviso insuring the continuation of the existing program of prevention of damages from erosion along the shores of the reservoir or of compensation for losses of land because of erosion. That program is presently carried out as a regular operation and maintenance function. The replacement dam will not alter the conditions which create the erosion problem. The second proviso makes clear that the existing erosion programs are intended to continue after the replacement.

(4) This is clarifying language recommended by the Department.

(5) The Department recommended that the Secretary of the Interior

be given the power of approval of the falling-water contract between the spaceholders and the owner of the powerplant contemplated to be constructed in conjunction with the replacement dam. The Committee adopted language indicating that the power of approval is limited to the determination that the contract will not impair the efficiency of the dam to serve the other purposes of the Federal Minidoka project.

(6) Section 5 of the bill provides the Secretary with authority to approve the designs and specifications for the replacement dam. The Committee has amended the section to provide that in the event of disagreement between the Secretary and the constructing agency concerning the design, an arbitration board of consulting engineers will be chosen to provide a binding decision on the question.

The Department of the Interior recommended that the costs incurred by the Department in the review of designs, specifications, and construction of the dam be reimbursable. The Committee, however, observes that the spaceholders are assuming large costs of construction which, in the event of Federal replacement of the dam, would have been nonreimbursible. To avoid a further financial burden on the spaceholders, the Committee has adopted language which would make the review costs nonreimbursable. In the event that appropriations were not available to permit the review to proceed expeditiously, however, the Secretary would be authorized to accept an advance from the spaceholders and to compensate them by payment or credit against charges at a later time.

(7) This amendment is as recommended by the Department to clarify the intent that specific facilities for fish and wildlife conservation contemplated in conjunction with the replacement dam are for the enhancement of the values rather than to mitigate damages. Furthermore, the measure would not prohibit the provision of recreation facilities under the provisions of the Land and Water Conservation Fund Act.

(8) The Department recommended this amendment to Sec. 7 to incorporate a specific amount for the authorization of appropriations for public recreation and fish and wildlife enhancement, and to authorize appropriations of funds to contribute the share of the costs of the replacement dam associated with the Fort Hall Indian reservation's rights to reservoir storage space.

(9) This is a technical amendment to correct an archaic usage.

(10) This amendment adds language agreed upon among the spaceholders and the local interests who are primarily concerned with the provision of an adequate highway crossing to replace the road on the existing dam. From testimony presented at the hearing, the Committee understands the language of the new Subsection 2(b) to require (i) that, as a minimum, a river crossing meeting current two-lane secondary highway standards must be provided along with the replacement of the dam, and the constructing agency is obligated to finance such a crossing to any extent necessary beyond available State and Federal funding; and (ii) the constructing agency is obligated to cooperate with the Idaho Department of Highways in seeking the provision of a four-lane crossing. The constructing agency, however, will have no obligation to finance any part of the additional two lanes, and the construction of the replacement dam will not be contingent upon the provision of the additional two lanes.

(11) See amendment No. (1).

The Department also recommended the deletion of the second proviso in Sec. 3 of the bill which would authorize the Secretary to extend the terms of existing repayment contracts with the spaceholders. The Department commented that such extensions are not necessary. The Committee chose to retain the language and notes that the decision to extend any of the contracts would be made at the discretion of the Secretary based upon a determination of need. The provision, therefore, only provides latitude to adjust the contracts if presently unanticipated financial burdens make such relief necessary.

COMMITTEE COMMENT

The Committee expects that the Secretary of the Interior will make every effort to facilitate the negotiations and agreements necessary to carry out the purposes of this measure. The intent of the procedure adopted is to expedite the completion of a replacement dam to minimize the hardships imposed upon the local people both by curtailments of water supplies and the inadequacy of the existing river crossing.

The choice of this alternative to Federal construction of a replacement dam imposes a considerable additional financial burden upon the spaceholders. Successful achievement of the replacement will require the cooperation of all of the parties, particularly the Interior Department, in carrying out its responsibilities for review and approval of designs, contracts and agreements.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, by unanimous vote of a quorum present at an open executive session on June 11, 1973, recommends that S. 1529, as amended, be enacted.

EXECUTIVE COMMUNICATIONS

The reports of the Office of Management and Budget, the Department of the Interior, and the Federal Power Commission on S. 1529 are set forth in full below.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., May 9, 1973.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your requests of April 13, 1973, for the views of the Office of Management and Budget on S. 1528, a bill "To authorize the Secretary of the Interior to construct, operate and maintain a replacement dam for the existing American Falls Dam of the Upper Snake River Basin project, Idaho, and for other purposes" and S. 1529, a bill "To authorize the Secretary of the Interior to enter into agreements with non-Federal agencies for the replacement of the existing American Falls Dam, Upper Snake River project, Idaho, and for other purposes."

In its report to your Committee on S. 1528 and S. 1529, the Department of the Interior recommends enactment of S. 1529 in lieu of S. 1528 subject to certain amendments. In its report, the Department supports the concept of replacing the existing American Falls Dam through private financing and states that Federal liability will be limited, as under existing law, to the proportioned share of costs assigned to the Fort Hall Indian Reservation and to specific public recreation and fish and wildlife facilities.

We concur in the position taken by the Department and, accordingly, subject to the suggested amendments, recommend enactment of S. 1529.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 9, 1973.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department concerning S. 1528 and S. 1529, similar bills to authorize replacement of the American Falls Dam in Idaho.

We recommend that S. 1529 be enacted with the amendments set forth below. Since we support enactment of S. 1529 and have not completed our review of the plan of replacing American Falls Dam specified in S. 1528, we cannot support its enactment at this time.

The bills.—S. 1529 would authorize the Secretary of the Interior to negotiate and enter into agreements with the American Falls Reservoir District or an appropriate agency representing the district which would authorize the agency to finance the major costs and provide for construction of a replacement dam for the existing American Falls Dam. Upon completion, the United States would take title to the dam and it would be a feature of the Upper Snake River reclamation project, operated and maintained by the Secretary. The dam would be considered a "government dam" as defined in the Federal Power Act. Holders of storage rights in the existing reservoir would not be affected by replacement of the dam and the existing contract rights of such spaceholders with the Secretary would be reaffirmed except as modified by the bill. The bill would authorize the constructing agency to enter into contracts with current spaceholders providing for repayment of the replacement dam's cost. The Secretary would be a party to such contracts and he would be authorized to amend existing contracts to extend the repayment periods as necessary to bring the combined repayment obligations within the spaceholders' repayment capacity. The constructing agency would be authorized to contract with a non-Federal entity for the use of falling water for power generation. The Secretary would be authorized to provide facilities for public recreation and fish and wildlife conservation in connection with the replacement dam and costs would be repaid in accordance with the Federal Water

Project Recreation Act. Construction of the replacement dam could not begin until the Secretary had approved the designs and specifications.

S. 1528 differs from S. 1529 in that it authorizes the Secretary of the Interior directly to construct, operate and maintain the replacement dam as part of the Upper Snake River project under the Federal Reclamation laws in accordance with the plan set forth in the Bureau of Reclamation's report dated December 1972 entitled "American Falls Dam Replacement". The dam would serve irrigation, flood control, electric power generation, fish and wildlife and recreation purposes, except that power generation facilities other than those necessary to accommodate the future addition of hydroelectric power would not be installed unless subsequently authorized by Congress. The bill authorizes appropriation of $29 million to construct the dam and provides that costs of improving the relocated highway across the top of the replacement dam to present day standards would be nonreimbursable to the Federal Government under the provisions of section 208 of the Flood Control Act of 1962. Public recreation and fish and wildlife conservation costs would be repaid in accordance with the Federal Water Project Recreation Act. Costs associated with the provisional features to accommodate future hydroelectric power would be deferred until power production is authorized. The interest rate applicable to the project for repayment purposes would be based on the long-term U.S. Governmental debt interest rate.

Background.—The Minidoka Project was authorized by the Secretary of the Interior on April 23, 1904, under the Reclamation Act of 1902.

American Falls Dam, a major feature of the Minidoka Project, was built by the Bureau of Reclamation in 1927. The dam is located on the Snake River in southeastern Idaho west of the town of Pocatello. American Falls Reservoir, with a capacity of 1.7 million acre-feet, is the largest storage reservoir in the Upper Snake River basin and contributes almost half the usable storage on the main stem of the Upper Snake River. Nearly 900,000 acres of land receive irrigation water from the reservoir and as of September 30, 1972, only $578,516.52 of irrigation costs remained unrepaid to the United States of the total Federal irrigation investment amounting to $7,511,087.11. There is an additional unpaid power obligation of $404,365. Abnormal cracking throughout the concrete dam was reported as early as 1929 and has become progressively more severe. The condition of the dam has been closely monitored through regular biennial inspections. As the result of a core-drilling program in the early 1960's it was discovered that the concrete in portions of the dam was in a relatively advanced stage of deterioration due to a chemical reaction between alkalis in the cement and the aggregate. This type of reaction was unknown at the time the dam was built and has resulted in a significant loss in its strength and durability. Incident to the deterioration of the dam is the deteriorating condition of the existing two-lane State Highway 39 on the dam. This hazardous condition has resulted in the application of stringent traffic control procedures by the Idaho Department of Highways.

Studies in 1968 by a private board of consultants, consisting of three nationally known civil engineers, confirmed the Bureau of Reclamation's findings concerning the safety of the dam. The board stated that replacement or rehabilitation of the dam is desirable and that the

choice between replacement and rehabilitation should be based on a comparison of detailed designs, cost estimates and useful life of the dam after such work had been completed.

The condition of the dam has necessitated careful regulation of reservoir storage to avoid harmful pressures on the thin upper portion of the structure. For a number of years, winter storage has been restricted to 8 feet below the maximum reservoir water surface elevation in order to prevent ice pressures on top of the dam. Maximum storage is now limited to 11.5 feet below full pool which reduces the reservoir storage capacity to 1,125,000 acre-feet or approximately 66 percent of maximum design capacity.

In December 1972, the Bureau of Reclamation's Regional Director completed a preliminary special report which identifies a plan for replacing the dam and developing related multipurpose features. The report has not been fully reviewed by this Department or other appropriate agencies and does not necessarily reflect the views of the Secretary of the Interior. A copy of the report entitled "American Falls Dam Replacement" is enclosed.

More recently the reservoir spaceholders and the Idaho Power Company have proposed a plan to replace the existing American Falls Dam through non-Federal financing. A formal report has not been prepared on their plan, but we understand its general approach is that the spaceholders would obtain the right to replace the dam and to enter into a 50 year falling water contract for power with a right of renewal. The spaceholders would obtain financing for the new dam by the sale of tax exempt bonds and would assist Idaho Power Company in obtaining a Federal Power Commission license for construction of a powerplant at the dam. The Idaho Power Company would pay to the spaceholders an amount of money equal to the annual requirements for interest and amortization of the spaceholders bonds over a 40 year period, up to the actual cost of the dam but not more than $19 million plus interest. The spaceholders would pay any additional cost over the $19 million plus interest and the costs of replacing the existing highway river crossing and facilities for recreation, fish and wildlife and public health and safety.

Discussion.—In order to retain the full benefits of the American Falls Reservoir, it is apparent that the present dam must be replaced. The regional economy is dependent to a significant degree on the dam and reservoir and would benefit from the proposed replacement, both in terms of additional direct utility from the project and elimination of future uncertainty. We note that non-Federal hydroelectric power would be included as part of the project, helping to meet regional energy requirements without adverse thermal power production impacts. Because plans for the replacement dam will be subject to approval by and execution of an agreement with the Secretary, we see no need for licensing the dam under the Federal Power Act. The bill obviates the licensing requirement by making the dam a "government dam" within the meaning of the Federal Power Act. The proposed powerplant would, however, require a license.

S. 1529 adopts a plan which permits the substantial benefits described above to be obtained without cost to the Federal Government except for public recreational and fish and wildlife conservation costs which would be shared with non-Federal interests in accordance with the Federal Water Project Recreation Act. By amendment suggested below, relatively small Federal appropriations would also be sought

for the proportionate share of costs assigned to the Fort Hall Indian Reservation. The plan thus calls for only minimal Federal expenditures and we believe the Federal cost is well worthwhile in view of the substantial benefits to the local economy.

Amendments.—Sections 1 and 4 of S. 1529 refer to the American Falls Dam and Reservoir being a part of the Upper Snake River Project. The existing American Falls Dam was authorized as a part of the Minidoka Project. The many water service and repayment contracts associated with American Falls Dam are identified as Minidoka Project contracts. The proposal is to replace a Minidoka Project feature without changing its size or water customers. Any new authorizations should continue to identify American Falls Dam as a part of the Minidoka Project and appropriate changes should therefor be made in the bill title and in sections 1 and 3 of the bill (page 2, lines 1, 5 and 9 and page 3, line 22) substituting "Minidoka Project" for "Upper Snake River Project". In addition, we recommend that the word "district" be deleted in line 6, section 1 and the words "present spaceholders" be substituted therefor. This change will provide greater flexibility in making final arrangements for replacement of the dam and will permit representation of spaceholders not now included in the American Falls Reservoir District.

With particular reference to protection of the Indian tribal interests of the Fort Hall Reservation we recommend that the bill be amended to assure that the level of the American Falls Reservoir not be raised and that appropriate action be taken to control any erosion which could adversely affect Indian lands. To accomplish this the following should be added at the end of section 1 of the bill:

> "The construction and operation of the replacement dam shall not result in an increase in the elevation of the reservoir water surface above that maintained for the original dam. Such construction and operation shall include provision for the correction and prevention of erosion related to the reservoir or for the full and adequate compensation of adjacent land owners (including owners of land subject to a flowage easement for the reservoir) if such erosion cannot be corrected or prevented."

The last proviso in section 3 authorizes the Secretary to extend the repayment periods for existing repayment contracts so that the combined repayment obligation for the existing dam and the replacement dam are within the spaceholders' repayment capacity. We are not aware of the need for this provision and believe it is inappropriate that the United States bear costs that might result from deferment of existing obligations. We therefore recommend deletion of this proviso (line 4 through 7 on page 3).

If an existing spaceholder is satisfied with the partial water supply that he now receives with limited operations of American Falls Dam and Reservoir and prefers not to sign a new contract, the bill leaves the position of the United States unclear. It is not desirable to provide that construction will not be started until contracts are obtained from all spaceholders, since this would mean that any spaceholder would have veto power over the entire arrangement. Delivery of water should, however, be made contingent upon execution of such contracts.

Therefore we recommend that section 3 be modified by striking on lines 23 and 24 the words "shall require" and by inserting in place

thereof the word "the" and on page 2, line 24, following the word "spaceholders" by deleting "to" and inserting the word "shall". On line 25, all after the word "upon" should be deleted and in lieu thereof the words "the execution of such contracts and the fulfillment of the obligation thereunder: *Provided*, That" should be inserted.

In order to provide the Secretary with a means of reviewing the falling water contract provided for in section 4 of the bill in advance, we recommend that the proviso set forth in that section be modified to read as follows:

> "*Provided*, That said contract for falling water shall be approved by the Secretary and shall not impair the efficiency of the project to serve the other purposes of the Minidoka Project."

We note that S. 1529 does not make specific reference to purposes to be served by the dam. We understand that those purposes are the same as those of the existing dam.

Prior to approval of the plans for the dam and reservoir, the Secretary would review, among other matters, the facilities planned for mitigation of any loss or damage to recreational, fish and wildlife values, the minimum facilities necessary for health and safety of reservoir users and others and the plans for any river highway crossing affecting project facilities. To make clear that the Secretary has authority to approve all such facilities associated with the replacement dam and the plan of construction, and to make clear that the cost of Secretarial review of the designs, specifications, plans and construction would be borne by the project beneficiaries, we recommend that section 5 of the bill be amended to read as follows:

> "SEC. 5. Construction of the replacement dam shall not be initiated until the Secretary has approved the designs and specifications of the dam and related facilities, and the plan of construction of the dam and of the proposed operation of the dam and reservoir. Costs incurred by the Secretary in reviewing such designs, specifications, plans and construction shall be included as project costs allocated to beneficiaries of the replacement dam and shall be reimbursable to the Secretary."

Sections 6 and 7 of the bill should be modified to make clear that the specific public recreation and fish and wildlife facilities referred to are for enhancement, rather than mitigation purposes, and to specify the costs involved. In addition, certain provisions need to be included in S. 1529 to take into account the fact that the Fort Hall Indian Agency is one of the spaceholders in American Falls Reservoir under an agreement with the Bureau of Reclamation for about 2.8 percent of the reservoir storage. To facilitate the future participation of the Fort Hall Indian Reservation in the replacement storage, appropriations should be authorized to pay the prorated construction costs apportionable to irrigation storage rights (costs of the replacement dam not otherwise paid for by the United States or the Idaho Power Company) of the Indian Reservation. In accordance with usual reclamation practice, reimbursement of such costs to the United States should be deferred in accordance with the Leavitt Act.

To accomplish these matters, in section 6 (lines 2 and 3, page 4) the word "enhancement", should be substituted for "conservation", and the following sentence added at the end:

Specific facilities for public recreation may also be provided in accordance with the Land and Water Conservation Fund Act of 1965, (78 Stat. 897), as amended (16 U.S.C. 460 et seq.).

Section 7 should be revised to read:

SEC. 7. There is hereby authorized to be appropriated for construction of specific facilities for public recreation and fish and wildlife enhancement the sum of $400,000 (July 1972 prices) plus or minus such amounts, if any, as may be required by reason of the changes in the cost of construction work of the type involved therein as shown by engineering cost indices. There are also authorized to be appropriated such funds as may be necessary to meet the prorated construction cost apportionable to the irrigation storage rights of the Michaud Division of the Fort Hall Indian Reservation for space in the reservoir behind the American Falls Replacement Dam and such cost shall be subject to the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 368a).

Environmental.—Enclosed is a draft environmental impact statement concerning the American Falls Dam replacement as contemplated by S. 1529, prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. The final environmental impact statement will be prepared and fully considered in determining whether to enter the agreements authorized by the bill and to approve plans for the replacement of the American Falls Dam.

The Office of Management and Budget has no obligation to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JACK O. HORTON,
Assistant Secretary of the Interior.

Enclosures.

FEDERAL POWER COMMISSION,
Washington, D.C., May 24, 1973.

S. 1529—93d Congress, Replacement of American Falls Dam, Idaho.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request of April 13, 1973, we enclose fifty copies of the report of the Federal Power Commission on S. 1529.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

JOHN N. NASSIKAS, *Chairman.*

Enclosure: 50 copies of FPC report on S. 1529.

FEDERAL POWER COMMISSION REPORT ON S. 1529—93D CONGRESS

S. 1529 would authorize the Secretary of the Interior (Secretary) to enter into agreements with non-Federal agencies for the replacement

of the existing American Fall Dam, Upper Snake River, Idaho. The United States would take title to the dam upon completion and the Secretary would operate and maintain it as a feature of the Upper Snake River reclamation project. The dam would be considered a "Government dam" as defined in section 3(10) of the Federal Power Act (41 Stat. 1064; 49 Stat. 838; 16 U.S.C. 796(10)) and accordingly the dam itself would not require a license from the Federal Power Commission. We note, however, that hydroelectric power facilities to be built downstream from the dam by Idaho Power Company would be licensed by the Commission.

The proposal under S. 1529 would result in replacement of Idaho Power Company's 27,000-kw plant with a new 100,000-kw plant. The redevelopment effected by construction of a new reclamation dam and a new powerhouse would assure the needed water supply for irrigation, would provide additional electric capacity and energy for the Company, and would provide better utilization of power potential of that reach of the Snake River.

The replacement of the existing reclamation dam would not alter the present proportionate storage rights of present spaceholders in the American Falls Reservoir and would constitute a reaffirmation of existing contract rights between the Secretary and the spaceholders except as the bill otherwise provides. The constructing agency would be authorized to enter into contracts with current spaceholders providing repayment of the cost of the replacement dam. The Secretary would be a party to such contracts and would be authorized to amend existing contracts to extend repayment period so that the combined repayment obligations would be within the spaceholders' repayment capacity. The bill authorizes the Secretary to sell surplus water from the Government dam to a non-Federal entity. Construction of the dam would not begin until the Secretary approves the designs and specifications. S. 1529 would also authorize the Secretary to provide specific facilities for public recreation and fish and wildlife conservation in connection with the replacement dam: costs would be repaid in accordance with the Federal Water Project Recreation Act (79 Stat. 213).

American Falls Dam was constructed by the Bureau of Reclamation during the period 1925–1927 to provide storage capacity for a 1,700,000 acre-feet of water with a full reservoir. This development together with six other smaller reservoirs are parts of an irrigation project which provides a full or supplemental water supply to more than one million acres of land situated discontinuously along a 300-mile length of the Snake River extending from the Wyoming State line to the town of Gooding in south-central Idaho.

Shortly after the American Falls project was completed it was noted that there was a deterioration of the concrete in the dam due to a chemical reaction between the cement and the aggregate. This deterioration has now progressed to a point where the Bureau of Reclamation, in the interest of safety, has lowered the maximum permissible reservoir level with a resultant decrease of 600,000 acre-feet in the usable storage capacity. With this reduction in the amount of stored water, the hazard of crop failures to irrigators is materially increased. Therefore, time is considered by the irrigators to be the essence of the solution of the present water shortage.

Commission staff members were informed in a meeting on March 8, 1973, with representatives of Idaho water users and the Idaho Power Company of their belief that the time required to remedy the current water shortage would be greatly reduced if the replacement of American Falls Dam could be made a non-Federal agency responsibility. The representatives, proposal was that reconstruction of the dam and the construction of a power plant of about 100,000 kw capacity would be a joint venture of the American Falls Reservoir District and the Idaho Power Company.

Idaho Power Company is interested in this matter because it owns a 27,000-kw power plant which draws water from American Falls Reservoir. As a spaceholder in the reservoir, the Company has primary storage in the amount of 45,000 acre-feet. Idaho Power Company has currently pending before the FPC an application for license for its American Falls development and two other hydroelectric developments—Shoshone Falls (12,380 kw) and Upper Salmon (34,500 kw)—to which a project number 2258 has been assigned. Action on this application has been deferred, at the Department of the Interior's request, pending a solution to the problem of the deteriorating American Falls Dam.

In about a 250-mile reach of the Upper Snake River downstream from American Falls, Idaho Power Company operates hydroelectric projects for which it has five major licenses outstanding: Twin Falls (Proj. No. 18), Lower Salmon (Proj. No. 2061), Bliss (Proj. No. 1975), C. J. Strike (Proj. No. 2055), and Swan Falls (Proj. No. 503) which collectively have power installations totaling approximately 240,000 kw.

The Bureau of Reclamation Minidoka powerplant (13,400 kw) and dam, which creates the 95,000 acre-foot Lake Walcott reservoir, are located about 40 river miles downstream from American Falls.

Although headwater benefit studies are planned for the future, the Commission has no specific information at this time as to the effect which the American Falls Reservoir operation has on the Idaho Power Company's downstream projects. However, we note that section 2 of S. 1529 provides that replacement of the existing dam shall in no way alter or change the present proportionate storage rights of spaceholders in the American Falls Reservoir.

With respect to Idaho Power Company's interest in this matter, it is noteworthy that the Company does desire to avert crop losses and maintain a viable economy in the area dependent upon American Falls storage by reason of the fact that it is the principal power supplier in this area.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

FEDERAL POWER COMMISSION,
JOHN N. NASSIKAS,
Chairman.

○

Exhibit W

[CONFORMED COPY]

FALLING WATER CONTRACT

Dated as of March 31, 1976

by and between

AMERICAN FALLS RESERVOIR DISTRICT

and

IDAHO POWER COMPANY

CONTRACT

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(This Table of Contents is not a part of this Contract and is only for convenience of reference.)

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FALLING WATER CONTRACT

BY AND BETWEEN

AMERICAN FALLS RESERVOIR DISTRICT

AND

IDAHO POWER COMPANY

THIS CONTRACT, entered into this 31st day of March, 1976, between the AMERICAN FALLS RESERVOIR DISTRICT, an instrumentality of the State of Idaho, with its offices located 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, hereinafter referred to as "Idaho Power Company";

WITNESSETH:

WHEREAS, the existing American Falls Dam and Reservoir ("Existing Dam") was constructed on the Snake River in southern Idaho adjacent to the City of American Falls, Idaho, by the United States ("United States"), and was placed in operation in 1927 as a part of the Minidoka Project, Idaho-Wyoming, and the United States contracted with certain organizations and individuals ("Waterusers") for various amounts of the storage space of the Existing Dam and which Waterusers agreed to pay the United States their proportionate share of the cost of the Existing Dam and the United States has retained ownership of the Existing Dam and has operated and maintained the Existing Dam primarily for the furnishing of water for irrigation purposes; and

WHEREAS, the Existing Dam provides irrigation storage water for beneficial use on approximately 900,000 acres of land in southern Idaho to which said water is appurtenant; and

WHEREAS, the United States has determined the Existing Dam to be no longer structurally competent, and in 1972 restricted storage in the top 11.3 feet of the Existing Dam on a year-round basis for safety reasons, and additional restrictions may possibly be required to continue to meet applicable safety standards as the deterioration of the Existing Dam advances, which present and future storage restrictions have and will cause severe economic losses to the Waterusers, reductions in recreational benefits and adverse effects on fish and wildlife facilities associated with the Existing Dam; and

WHEREAS, Chapter 22 of Title 43, Idaho Code, as amended, ("State Act"), authorizes the Constructing Agency, for the purpose of preserving, restoring, protecting and maintaining rights of storage, diversion and delivery of water necessary and appurtenant to the purposes for which the Constructing Agency and other like similarly situated irrigation districts were organized: (1) to reconstruct, rehabilitate, replace and improve dams and other related structures and works together with all necessary appurtenances related thereto whether located within or without its boundaries and whether or not legal title thereto is owned by it, including without limitation as a part thereof the reconstruction and relocation of all roads, bridges and highways made necessary by reason of such reconstruction, rehabilitation, replacement and improvement, the construction of penstocks and other facilities related to hydroelectric production plant which are made necessary in order to carry out the provisions of this Falling Water Contract and facilities for flood control, public recreation and fish and wildlife mitigation purposes made necessary in order to comply with applicable state and Federal requirements; (2) to enter into all necessary agreements, contracts and other legal arrangements with the United States and its agencies and departments, the State of Idaho and its agencies, departments and political subdivisions, and public and private persons, firms, corporations and associations in order to carry out such reconstruction, rehabilitation, replacement and improvement; and (3) to issue its Bonds ("Bonds") in the manner provided therein for the purpose of paying all or part of the cost of such reconstruction, rehabilitation, replacement and improvement, together with all expenses preliminary and incidental thereto; and

WHEREAS, the State Act provides that any Bonds issued and sold pursuant to the provisions thereof shall be payable solely out of a special fund into which the Constructing Agency shall be obligated to deposit, as from time to time received: (1) the proceeds of the collection of certain assessments to be levied and collected by the Constructing Agency on lands contained within its boundaries; (2) payments pursuant to contracts to be entered into by the Constructing Agency with other irrigation districts; (3) payments pursuant to contracts to be entered into by the Construction Agency with other public or private persons, firms, corporations and associations; and (4) when so authorized by Act of Congress, the proceeds from the sale or use of falling water released from the dam to be so reconstructed, rehabilitated, replaced and improved, pursuant to a contract for the use of such falling water for power generation to be entered into by the Construction Agency with a public or private person, firm, corporation or association; and

WHEREAS, pursuant to the provisions of the Act of Congress of December 28, 1973 ("Act of December 28, 1973"), the United States, acting through the Regional Director, Pacific Northwest Region, Bureau of Reclamation ("Contracting Officer") upon authorization of the United States Secretary of the Interior ("Secretary") has entered into an agreement with the Constructing Agency ("Government Contract") of even date herewith, authorizing the Constructing Agency to finance and provide for the construction of a new dam ("Replacement Dam") and related structures and works to replace the Existing Dam (which Replacement Dam and related structures and works, together with the storage reservoir to be created behind the Replacement Dam, are hereinafter collectively referred to as the "American Falls Replacement Dam Program"); and

WHEREAS, the Government Contract provides that delivery of water is to be contingent upon the execution by each Wateruser of a contract with the Constructing Agency and the United States (which contracts are collectively referred to as "Spaceholder Contracts") providing for the repayment by such Wateruser of its proportionate share of the total costs to be incurred by the Constructing Agency for engineering, financing, designing and constructing the American Falls Replacement Dam Program not returned by this Falling Water Contract, and providing that the delivery of water to each Wateruser shall be contingent upon the fulfillment of the obligations thereunder, said Spaceholder Contracts being otherwise consistent with the terms of the various existing contracts between the Secretary and the Waterusers for the delivery of water from and the payment of costs associated with the Existing Dam; and

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 (which Waterusers which have entered into Spaceholder Contracts being herein referred to as "Spaceholders"); and

WHEREAS, the Act of December 28, 1973, also authorizes the Constructing Agency to contract with a non-Federal entity, as herein provided, for the use by such non-Federal entity for power generation of the falling water released from the Replacement Dam for irrigation and other purposes incidental thereto, which contract shall provide for a monetary return to the Constructing Agency to defray in part the costs of financing and constructing the American Falls Replacement Dam Program and for the coordination of the construction of hydroelectric power facilities with the construction of the Replacement Dam, provided said contract shall be approved by the Secretary and shall not impair the efficiency of the Replacement Dam to serve the other purposes of the Minidoka Project; and

WHEREAS, the State Act provides that the contract for the use of falling water may contain such provisions as are contemplated in the Act of December 28, 1973, providing for the reconstruction, rehabilitation, replacement and improvement of such dam and other related structures and works and appurtenances, the coordination of the construction of the hydroelectric power facilities, the conditions under which the non-Federal entity shall make payments to the Construction Agency, the rights and remedies of the parties to such contract in the event of a failure of the non-Federal entity to make the required payments, and the securing of all necessary permits and licenses required in connection therewith; and

WHEREAS, the Idaho Power Company is a Wateruser and is also the owner and operator of a hydroelectric generating powerplant located on the Snake River below the Existing Dam adjacent to the City of American Falls, Idaho pursuant to a license issued by the Federal Power Commission on March 31, 1975, for Project No. 2258; and

WHEREAS, the construction and operation by Idaho Power Company of a new hydroelectric generating facility ("Powerplant") attached to the Replacement Dam will increase power generation over that produced by the existing powerplant by utilizing the additional head and more of the water released from the Replacement Dam for irrigation and other purposes incidental thereto; and

WHEREAS, as contemplated in Section 4 of the Act of December 28, 1973 and in the State Act (Section 43-2201(D)(4), Idaho Code), 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, for utilization by it for power generation at the Powerplant of falling water released from the Replacement Dam for irrigation and other purposes incidental thereto, within the limitations specified in the Government Contract, $19,550,000 of the principal amount of the cost of financing and constructing the American Falls Replacement Dam Program, and subsequently further agreed to increase such amount by the cost of the 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 ("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

WHEREAS, under the provisions of Section 4 of the Act of December 28, 1973, and the provisions of the State Act (Section 43-2201(D)(4), Idaho Code), the Constructing Agency and the Idaho Power Company have agreed to enter into this falling water contract (hereinafter referred to as the "Falling Water Contract"), but only upon satisfaction of the conditions set forth herein; and

WHEREAS, the Constructing Agency has made provision for the estimation of the cost of financing and constructing the American Falls Replacement Dam Program, and, as required in the State Act, the allocation of the costs of financing and constructing the American Falls Replacement Dam Program as between the sums to be paid pursuant to this Falling Water Contract and the Spaceholder Contracts, and has made provision for a determination as to the actual amount of Bonds of the Constructing Agency to be issued, depending upon the amounts to be prepaid pursuant to the provisions of the several Spaceholder Contracts, it being contemplated that the United States will, pursuant to Section 7 of the Act of December 28, 1973, pay, as provided in the Michaud Division, Fort Hall Indian Reservation Spaceholder Contract entered into between the Constructing Agency and the United States, the proportionate share of the Michaud Division, Fort Hall Indian Reservation of the total cost of financing and constructing the American Falls Replacement Dam Program not returned pursuant to this Falling Water Contract; and

WHEREAS, pursuant to authority contained in the State Act the Constructing Agency has heretofore authorized the issuance of not to exceed $44,750,000 Bonds of the Constructing Agency for the purpose of paying all or part of the costs of financing and constructing the American Falls Replacement Dam Program, and further the Constructing Agency has called and held an election at which the Constructing Agency was authorized to impose assessments on lands within the Constructing Agency, approving said assessments, and was authorized to execute a Spaceholder Contract with the United States and to execute the Government Contract; and

WHEREAS, the Constructing Agency will institute proceedings pursuant to the provisions of the State Act for the purpose of obtaining confirmation decrees approving this Falling Water Contract, the Spaceholder Contracts, the Government Contract, and the levy and collection of the assessments, which confirmation proceedings will, prior to the issuance of the Bonds, be completed in accordance with the provisions of the State Act; and

WHEREAS, the Constructing Agency has entered into an agreement dated November 27, 1974, with the State of Idaho, acting by and through the Department of Transportation, Division of Highways, providing for construction of a two-lane highway on the crest of the Replacement Dam and construction of a two-lane highway bridge located immediately downstream from the Replacement Dam, and providing for the payment by the Constructing Agency of 50% of the total cost of the construction of said highway and bridge as part of the American Falls Replacement Dam Program; and

WHEREAS, the Constructing Agency has entered into an agreement dated July 2, 1974, with the Idaho Fish and Game Department providing for the payment by the Constructing Agency of costs relating to the mitigation of anticipated loss of existing recreational and fish and wildlife resources and constituting the Recreation and Fish and Wildlife Mitigation Facilities (as hereinafter defined); and

WHEREAS, it is provided in the Act of December 28, 1973, that this Falling Water Contract shall be approved by the Secretary and all requirements and conditions of the Act of December 28, 1973 have or will have been satisfied prior to the delivery of any of the Bonds of the Constructing Agency herein contemplated to be issued; and

WHEREAS, the Idaho Power Company has received a fifty (50) year license for Project No. 2736 issued March 31, 1975 by the Federal Power Commission authorizing it to construct, operate, and maintain the Powerplant; and

WHEREAS, the Constructing Agency has executed the Government Contract with the United States, as contemplated in the Act of December 28, 1973, to which Government Contract a copy of this Falling Water Contract is attached as an exhibit, and by the execution of the Government Contract the Secretary, in accordance with the provisions of the Act of December 28, 1973, approves this Falling Water Contract as though incorporated in and made a part of the Government Contract; and

WHEREAS, the Constructing Agency and the Idaho Power Company desire to provide that the issuance, sale and delivery by the Constructing Agency of its Bonds pursuant to the authority contained in the State Act, in an amount which shall be sufficient to pay the estimated cost of financing and constructing the American Falls Replacement Dam Program not paid in advance by Spaceholders pursuant to the Spaceholder Contracts, shall be a condition precedent to the obligation of the Idaho Power Company to make the payments to the Constructing Agency provided for in this Falling Water Contract in consideration of the utilization by the Idaho Power Company at the Powerplant for power generation, within the limitations specified in the Government Contract, of the falling water released from the Replacement Dam for irrigation and other purposes incidental thereto; and

WHEREAS, the Idaho Power Company and the Constructing Agency desire to enter into an arrangement hereunder whereby the Constructing Agency, having entered into the Spaceholder Contracts and the Government Contract, and as a Spaceholder having imposed assessments on lands within its boundaries, will issue and sell its Bonds for the purpose of paying the costs of financing and constructing the American Falls Replacement Dam Program not paid in advance by the Spaceholders, and whereby the Idaho Power Company in accordance with the provisions of the Federal Power Commission license, will finance, construct and own the Powerplant, and will make the payments to the Constructing Agency contemplated hereunder; and

WHEREAS, the Constructing Agency and the Idaho Power Company wish to delineate their mutual responsibilities and to set forth the terms and conditions for the use of the Falling Water by the Idaho Power Company, for the engineering, financing, construction, ownership and operation of the American Falls Replacement Dam Program and the Powerplant and the coordination of the construction of the Powerplant with the construction of the Replacement Dam;

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:

ARTICLE I

DEFINITIONS

The following words and phrases shall have the following meanings, unless the context clearly indicates to the contrary:

"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.

"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.

"Assessments" shall mean the Assessments to be levied pursuant to Title 43, Idaho Code, as contemplated in the State Act (Section 43-2201(D)(1) and (2), Idaho Code), representing the amount of benefits to accrue to each tract or subdivision in an irrigation district based upon the allocation of the Cost of Construction of the American Falls Replacement Dam Program, in the proportion that the right to the storage, diversion and delivery of water appurtenant to each such tract or subdivision bears to the total right to the storage, diversion and delivery of water from the Replacement Dam.

"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 of the Spaceholder Contracts, 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.

"Board" shall mean the Board of Directors of the Constructing Agency.

"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.

"Completion Date" shall mean the date of completion of the construction of the Replacement Dam, the Related Facilities and the Water Quality Facilities within the meaning of the Act of December 28, 1973, which shall be deemed to be the date upon which the Constructing Agency, the Idaho Power Company and the Trustee are given the completion notice by the Secretary as provided in Article 14(d) of the Government Contract.

"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 Period" shall mean the period commencing upon the initiation of construction of the American Falls Replacement Dam Program and ending on the Completion Date.

"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 Section 8.4 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) thereof.

"Designs and Specifications" shall mean the final Designs and Specifications of any facility required pursuant to Article 10(a) of the Government Contract to be constructed by the Constructing Agency as a part of the American Falls Replacement Dam Program, as approved by the Contracting Officer pursuant to Article 10(b) of the Government Contract.

"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.

"Falling Water" shall mean the water released from the Replacement Dam for irrigation and other purposes incidental thereto, the utilization of which during the Original Term of this Falling Water Contract, within the limitations specified in the Government Contract, is granted to the Idaho Power Company for power generation at the Powerplant in return for the Falling Water Payments to the Constructing Agency, which utilization shall be subordinate to the furnishing of water for irrigation purposes.

"Falling Water Contract" shall mean this contract entered into between the Constructing Agency and the 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 this Falling Water Contract as a part of the consideration for the utilization for power generation at the Powerplant of the Falling 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.

"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 Series 1976 Bonds (including any indenture supplemental thereto).

"Independent Engineer" shall mean an engineer or engineering firm registered or licensed to practice the profession of engineering under the laws of Idaho, together with an appropriate staff and supporting equipment and who or which is not a full-time engineer of either the Constructing Agency or the Idaho Power Company.

"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.

"Installment" shall mean an annual payment of the principal and interest of the Falling Water Payments as such Installments are set forth in the Schedule of Falling Water Payments to be filed with the Idaho Power Company and the Trustee pursuant to the provisions of Section 9.8 hereof and which are assigned to the Trustee pursuant to Section 501 of the Indenture.

"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 II* hereto. Upon the execution of a Spaceholder Contract by a Non-Participating Wateruser, such Non-Participating Wateruser shall be deemed to be a Spaceholder.

"Original Term" shall mean the duration of this Falling Water Contract, as specified in Section 14.1 hereof, ending concurrent with the expiration of the initial 50 year term of the License.

"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.

"Plans, Designs and Specifications" shall mean the plans for the American Falls Replacement Dam Program, as set forth in Section 4.1 hereof, the Designs and Specifications, the Plan of Operation and the Construction Work Schedule.

"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.

"Prepayment Fund" shall mean the Prepayment Fund created by Article 23(c) of the Spaceholder Contracts for the purpose of holding prepayments made by Spaceholders pursuant to Article 23 of the Spaceholder Contracts.

"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.

"Renewal Term" shall mean any term following the Original Term of this Falling Water Contract, as specified in Section 14.2 hereof.

"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 Falling Water Payments" shall mean that schedule supplied to the Idaho Power Company, pursuant to the provisions of Section 9.8 of this Falling Water Contract, showing the annual Installments to be paid to the Trustee for deposit into the Bond Fund.

"Schedules of Spaceholder Bond Payments" shall mean the schedules supplied to the Spaceholders, pursuant to the provisions of Section 9.8 of this Falling Water Contract, showing the annual sums to be paid to the Trustee for deposit into the Bond Fund.

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

"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 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 Spaceholders pursuant to the Spaceholder Contracts 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 the Trustee and any paying agent bank.

"Spaceholder Replacement Dam Operation and Maintenance Payments" shall mean the payments obligated to be made pursuant to the Spaceholder Contracts by the Spaceholders 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 19 of the Government Contract.

"Spaceholder Water Quality Facilities Operation and Maintenance Payments" shall mean the payments obligated to be made by the Spaceholders 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 the Idaho Power Company pursuant to this Falling Water Contract representing the obligations of 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.

"Underwriter" or "Underwriters" shall mean Kidder, Peabody & Co. Incorporated, an investment banking firm, located in the City of New York, New York, which has agreed to submit a proposal for the purchase of the Series 1976 Bonds and, if such proposal is accepted, shall be the Underwriter of the Series 1976 Bonds, but if such proposal is not accepted, then, any investment banking firm or firms with whom the Constructing Agency shall execute a bond purchase agreement for the purchase of the Series 1976 Bonds or any Bonds issued pursuant to the provisions hereof.

"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.

ARTICLE II

Representations

Section 2.1. *General Representations.* The Constructing Agency and the Idaho Power Company represent and warrant, one to the other, that:

(a) This Falling Water Contract is the contract contemplated to be entered into by the Constructing Agency, with the approval of the Secretary, with an appropriate non-Federal entity for the utilization of the Falling Water at the Powerplant for power generation, and the coordination of the construction of the Powerplant with the construction of the Replacement Dam, in accordance with Section 4 of the Act of December 28, 1973, and the State Act (Section 43-2201(D)(4), Idaho Code).

(b) This Falling Water Contract, having been approved by the Secretary as required by the Act of December 28, 1973, shall not in any way impair the efficiency of the Replacement Dam to serve the other purposes of the Minidoka Project.

(c) The Constructing Agency herein proposes to contract with the Idaho Power Company for the utilization by the Idaho Power Company of the Falling Water at the Powerplant for power generation within the limitations specified in the Government Contract and in accordance with the conditions set forth in the License, and in consideration thereof the Idaho Power Company shall make the Falling Water Payments to the Constructing Agency to help defray the Cost of Construction and shall make the Supplemental Falling Water Payments as herein contemplated. The Idaho Power Company and the Constructing Agency shall coordinate the construction of the Powerplant with the construction of the American Falls Replacement Dam Program to the mutual benefit of the Idaho Power Company and the Constructing Agency, including joint bidding if such shall be deemed desirable. As provided in Section 4 of the Act of December 28, 1973, this Falling Water Contract shall not be the subject of the limitations of Section 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1194), or of any similar limitations in any other applicable Acts of Congress.

(d) The utilization by the Idaho Power Company of the Falling Water at the Powerplant for power generation is and shall continue to be subordinate to the furnishing of water from the Replacement Dam for irrigation purposes.

(e) Less than ten per cent (10%) of the water accruing to the active storage capacity in the Replacement Dam may be contractually scheduled for release from the Replacement Dam by the Idaho Power Company, except for temporary increases following a default by a Non-Participating Wateruser or a Spaceholder as provided in Section 3.5 hereof or arising from unusually wet or dry weather in the service area of the Replacement Dam.

SECTION 2.2. *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 the Government Contract and into this Falling Water Contract for the purpose of accomplishing the construction of the American Falls Replacement Dam Program pursuant to the provisions of the Act of December 28, 1973 and the State Act. The Constructing Agency intends to issue its Bonds pursuant to the State Act in reliance upon the obligation of Idaho Power Company during the Original Term to make the Falling Water Payments and the Supplemental Falling Water Payments and it is, therefore, necessary to recognize and provide for the rights of the holders, from time to time, of the Bonds of the Constructing Agency contemplated to be issued for the purpose of paying all or part of the Cost of Construction of the American Falls Replacement Dam Program. The Idaho Power Company, within the limitations specified in the Government Contract, will utilize for power generation at the Powerplant the Falling Water during the Original Term and it is, therefore, necessary in the Government Contract, to recognize and provide for the right of the Idaho Power Company for the continued utilization of the Falling Water after title to the Replacement Dam, the Related Facilities, and the Water Quality Facilities shall be taken by the United States, pursuant to the requirements of the Act of December 28, 1973.

(c) The Constructing Agency will not construct the Replacement Dam so as to result in an increase in the elevation of the water surface of the Replacement Dam above that maintained for the Existing Dam, *i.e.*, 4354.5 feet above mean sea level U.S.C.& G.S. datum.

(d) The Constructing Agency has made adequate provision in the Government Contract for the correction and prevention of erosion related to the Replacement Dam or for the payment, from lawfully available funds arising from sources other than the Falling Water Payments or the Spaceholder Bond Payments, for full and adequate compensation of the adjacent landowners, including owners of land subject to a flowage easement, if such erosion cannot be corrected or prevented.

(e) Construction of the Replacement Dam will in no way alter or change the present proportionate storage rights of the Waterusers, except as provided in the Government Contract and the Spaceholder Contracts, and constitutes a reaffirmation by the United States of the existing contract rights between the Secretary and the Waterusers, except as otherwise provided in the Act of December 28, 1973.

(f) The Constructing Agency, together with the State of Idaho, has provided for compliance with the provisions of Section 2(b) and (c) of the Act of December 28, 1973 by the execution of that certain agreement dated November 27, 1974, by and between the Constructing Agency and the State of Idaho, providing for the inclusion in the American Falls Replacement Dam Program of: (i) a river crossing, consisting of a bridge for two-lane traffic, downstream from the Replacement Dam; (ii) an additional two lanes on top of the Replacement Dam; and (iii) the maintenance of an adequate two-lane, two-way crossing at or near the site of the Existing Dam during construction of the Replacement Dam.

(g) The Constructing Agency, together with the Idaho Fish and Game Department, has provided for compliance with the provisions of the Government Contract by the execution of that certain agreement dated July 2, 1974, providing for the payment by the Constructing Agency to the Idaho Fish and Game Department of the costs of the Recreation and Fish and Wildlife Mitigation Facilities included in the American Falls Replacement Dam Program.

(h) All requirements of the Act of December 28, 1973, the State Act, and the Government Contract will be complied with by the Constructing Agency in connection with the financing and construction of the American Falls Replacement Dam Program.

(i) 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 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: (a) the payments by the Constructing Agency under its Spaceholder Contract of sums arising from Assessments to be levied by the Constructing Agency, pursuant to the provisions of the State Act as a Spaceholder on lands within its boundaries for its proportionate share of the Cost of Construction and allocated to such lands by the Construction Agency pursuant to the requirements of the State Act; (b) the payments by other irrigation districts under their respective Spaceholder Contracts of sums arising from Assessments to be levied by said irrigation districts, pursuant to the provisions of the State Act, representing their respective proportionate shares of the Cost of Construction and allocated to each such irrigation district by the Constructing Agency pursuant to the requirements of the State Act; (c) the payments by the remaining Spaceholders under their respective Spaceholder Contracts of their respective proportionate shares of the Cost of Construction; and (d) the Falling Water Payments and Supplemental Falling Water Payments contemplated to be paid to the Constructing Agency by the Idaho Power Company, pursuant to the provisions of Article III hereof.

(j) The Constructing Agency will, at no additional expense to it, cooperate with the Idaho Power Company in its studies of fish mortality through the turbines and in its consultation and cooperation with other state and Federal agencies in the protection and development of the natural resources of the area of the "project" as defined in the License.

(k) The Constructing Agency will, at no additional expense to it, cooperate with the Idaho Power Company in the making of a project study of the feasibility of including the Old Island Powerhouse as a historical resource.

(l) The Constructing Agency agrees to recommend to the Fish and Game Department of the State of Idaho that the Department consider construction of a foot trail to provide public access from the Powerplant parking area under the railroad bridge to the west river bank of the tailrace area, with a portion of the funds to be provided by the Constructing Agency to the Idaho Fish and Game Department for the purpose of mitigating the anticipated loss of existing recreational and fish and wildlife resources.

(m) The Constructing Agency is not in default under any of the provisions contained in any agreement to which it is a party, and, by proper action, the Board has duly authorized its President to execute and deliver this Falling Water Contract, and its Secretary to attest and affix the seal of the Constructing Agency to this Falling Water Contract, all on behalf of the Constructing Agency.

(n) No additional or further approval, consent or authorization of any governmental unit, public agency or authority not already obtained is required by the Constructing Agency in connection with the execution of this Falling Water Contract.

SECTION 2.3. *Representations of the 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 Main and Idaho and its charter and by-laws to enter into this Falling Water Contract and by proper corporate action has been duly authorized to execute and deliver this Falling Water Contract.

(b) No additional or further approval, consent or authorization of any governmental unit, public agency or authority not already obtained is required by the Idaho Power Company in connection with the execution of this Falling Water Contract, except those recognized in subsection (c) hereof.

(c) The power of the Idaho Power Company to enter into the transactions contemplated by this Falling Water Contract and to carry out its obligations hereunder with respect to the Falling Water Payments and Supplemental Falling Water Payments 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 prior to the issuance of any of the Series 1976 Bonds or any Interim Notes.

(d) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or, to the best of the Idaho Power Company's knowledge and information, threatened against or affecting the Idaho Power Company, or, to the best of the Idaho Power Company's knowledge and information, any basis for any such action, suit, proceeding or investigation, wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of this Falling Water Contract.

(e) Neither the execution and delivery of this Falling Water Contract, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Falling Water Contract, conflict with or result in a breach of any of the terms, conditions or provisions or any corporate restriction or any agreement or instrument to which the Idaho Power Company is now a party or by which it is bound, or constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge or encumbrance of any

nature whatsoever upon any of the property or assets of the Idaho Power Company under the terms of any instrument or agreement.

(f) The Idaho Power Company is able to and will obtain funds necessary for the construction of the Powerplant pursuant to the provisions of Article X hereof.

(g) Under date of April 25, 1975, the Idaho Power Company acknowledged acceptance of all of the provisions, terms and conditions of the License; that the License is in full force and effect, has not been rescinded or amended in any way; and, except with respect to the provisions of Articles 38, 43 and 45 hereof as to which an application for an extension of time has been filed with the Federal Power Commission, the Idaho Power Company is in compliance with all the provisions, terms and conditions of the License.

(h) That the Idaho Power Company shall commence construction of the Powerplant and complete construction of the project works described in the License within the period specified in the License or any amendment thereto.

(i) So long as any of the Bonds or Interim Notes are outstanding and unpaid, the Idaho Power Company will not acquire, on a permanent contractual basis, an additional amount of the water accruing to the active storage capacity in the Replacement Dam for the purpose of scheduled releases for generating electric energy, which together with the amount of active storage capacity presently owned by the Idaho Power Company under its Spaceholder Contract (2.6471%) would exceed eight per cent (8%) of the active storage capacity of the Replacement Dam.

ARTICLE III

Use of Falling Water

SECTION 3.1. *Falling Water Payments; Use of Falling Water.* Unless sooner terminated as provided in Section 4.11 hereof, and subject only to the issuance by the Constructing Agency of its Series 1976 Bonds as contemplated by Section 9.1 hereof, in consideration of the utilization by the Idaho Power Company of the Falling Water at the Powerplant for power generation within the limitations specified in the Government Contract, the Idaho Power Company shall pay the Falling Water Payments determined in accordance with the provisions of Article IX hereof directly to the Trustee for the account of the Constructing Agency, in lawful money of the United States, at the times as determined in Section 9.3 hereof and at the Trustee's address shown in the Indenture, or at such other place as the Trustee from time to time shall designate. The Falling Water Payments, pursuant to this Falling Water Contract, shall constitute the monetary return to the Constructing Agency to defray in part the Cost of Construction contemplated to be paid in the Act of December 28, 1973. So long as the Idaho Power Company is not in default under the provisions hereof, the Idaho Power Company shall be entitled to utilize, during the term of the License or any continuation or renewal thereof, the Falling Water in accordance with the provisions of the License, at the Powerplant for power generation in connection with the operation by the United States of the Replacement Dam, within the limitations specified in Articles 16 and 18 of the Government Contract. The Secretary has, by his approval of this Falling Water Contract, evidenced his consent to such utilization, provided, that such approval does not preclude the Secretary from making any recommendations or comments in respect to the License or any continuation or renewal thereof.

SECTION 3.2. *Trustee and Paying Agent Costs.* The Idaho Power Company shall pay to the Trustee annually at the same time as it pays the Installments of the Falling Water 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 as determined in accordance with the provisions of Article IX hereof.

SECTION 3.3. *Interest on Overdue Installments of Falling Water Payments.* In the event of the failure of the Idaho Power Company to pay all or any part of any Installment of the Falling Water

Payments, such overdue Installment or portion thereof shall bear interest at the rate of the lesser of eight per cent (8%) per annum or the maximum interest rate then permitted by Idaho law.

SECTION 3.4. *Supplemental Falling Water Payments.* (A) The Constructing Agency and the Idaho Power Company recognize that a higher investment quality rating for the Bonds will be obtained from the respective rating agencies by the Constructing Agency (resulting in a lower net interest cost on the Bonds), if the Idaho Power Company would agree to make to the Trustee on behalf of the Constructing Agency, Supplemental Falling Water Payments in the manner contemplated in this Section 3.4, in the event that Waterusers fail to execute Spaceholder Contracts thereby becoming Non-Participating Waterusers or in the event that Spaceholders to which Article 17 of the Government Contract applies default in the making of all or any part of a Spaceholder Payment. Accordingly, within seven (7) days after the occurrence thereof, the Constructing Agency, or the Trustee on behalf of the Constructing Agency, or the Contracting Officer, as the case may be, shall give notice to the Idaho Power Company, the Contracting Officer, the Constructing Agency, the Defaulted Spaceholder and the Non-Participating Wateruser as the case may be, in the manner provided in Section 14.6 hereof, of:

(1) any default by any Spaceholder to which Article 17 of the Government Contract applies under a Spaceholder Contract of its obligation to make all or any part of a Spaceholder Payment, or

(2) failure to receive all or any part of a Spaceholder Payment which would have been due with respect to the space of a Non-Participating Wateruser had the Non-Participating Wateruser executed a Spaceholder Contract.

(B) The Idaho Power Company shall make a Supplemental Falling Water Payment to the Trustee, within ten (10) days after the notice provided for in (A) of this Section 3.4 has been given, which shall be sufficient:

(1) to pay all Spaceholder Payments including penalties and interest, or any portion thereof, then in default and due under any Spaceholder Contract, and

(2) to pay all Spaceholder Payments, including penalties and interest, or any portion thereof, which would have been due and payable with respect to the space of a Non-Participating Wateruser had the Non-Participating Wateruser executed a Spaceholder Contract and defaulted on the Spaceholder Payments becoming due and payable thereunder, as contemplated in Article 17(b) of the Government Contract.

The Supplemental Falling Water Payments shall be made by the Idaho Power Company to the Trustee at the same place as the Constructing Agency would make such payments pursuant to the Spaceholder Contracts.

(C) The Trustee shall apply the Supplemental Falling Water Payments as follows:

(1) that portion of the Supplemental Falling Water Payment represented by Spaceholder Bond Payments attributable either to a Defaulted Spaceholder or to a Non-Participating Wateruser shall be applied to the payment of principal of and interest on the Bonds as the same become due and payable (such portion of the Supplemental Falling Water Payments shall be credited separate and apart from the obligation of the Idaho Power Company to make the Installments of Falling Water Payments);

(2) that portion of the Supplemental Falling Water Payment represented by Spaceholder Replacement Dam Operation and Maintenance Payments attributable either to a Defaulted Spaceholder or to a Non-Participating Wateruser shall be paid to the Contracting Officer to be accounted for in accordance with the applicable provisions of the Government Contract and of the Spaceholder Contracts; and

(3) that portion of the Supplemental Falling Water Payment represented by Spaceholder Water Quality Facilities Operation and Maintenance Payments attributable either to a Defaulted

Spaceholder or to a Non-Participating Wateruser shall be paid to the Constructing Agency to be accounted for in accordance with the applicable provisions of the Spaceholder Contracts and the Water Quality Facilities Agreement.

(D) As provided in Article 17(d) of the Government Contract, if by May 15 of each year in which the Idaho Power Company shall have made a Supplemental Falling Water Payment to the Trustee pursuant to this Section 3.4, the Contracting Officer has not repaid to the Idaho Power Company the amount of the Supplemental Falling Water Payment made by the Idaho Power Company in that year, plus interest at the lesser of eight per cent (8%) per annum or the maximum then permitted under Idaho law, the water accruing to the space of the Defaulted Spaceholders or Non-Participating Waterusers will be made available to the Idaho Power Company for power generation as provided in Section 3.5 hereof, pursuant to Article 18(b) of the Government Contract.

(E) If the use of space by any Non-Participating Wateruser is terminated as provided in Article 17 of the Government Contract or if any Spaceholder Contract is terminated as provided in Article 29 thereof, and a Spaceholder Contract providing for the disposition of such space shall have been executed, as contemplated in Article 17(e) of the Government Contract, the Idaho Power Company and the Trustee shall be notified by the Constructing Agency of the execution of such Spaceholder Contract. Whenever a Non-Participating Wateruser executes a Spaceholder Contract, the Idaho Power Company and the Trustee shall be notified by the Constructing Agency of the execution of such Spaceholder Contract. Upon the execution of any such Spaceholder Contract, the Idaho Power Company will make Supplemental Falling Water Payments with respect to a default pursuant to such Spaceholder Contract, as though such Spaceholder Contract were one of the Spaceholder Contracts initially executed by the Contracting Officer and the Constructing Agency and will treat such Spaceholder Contract as a Spaceholder Contract for all purposes of this Falling Water Contract.

SECTION 3.5. *Use by Idaho Power Company of Space of Defaulted Spaceholder or Non-Participating Wateruser.* The Idaho Power Company shall, subject to the limitations of Article 16 and Article 18 of the Government Contract, be entitled to schedule for release and to utilize for power generation at the Powerplant and at the downstream powerplants of the Idaho Power Company the water accruing to the storage space of a Defaulted Spaceholder or a Non-Participating Wateruser that is made available under the procedures of Article 17 of the Government Contract; provided, however, that any such water may be utilized only during the period of May 15 through December 31 of the year in which such water is made available and only under a schedule of release so that the quantity of such water released during the period of November 1 through December 31 without regard to other released water, will not result in releases of water at the Minidoka Dam and Reservoir in excess of the hydraulic capacity of the Minidoka Powerplant as it now exists or as it may be enlarged in the future.

The Idaho Power Company agrees to make the Supplemental Falling Water Payments contemplated herein, whether or not the Idaho Power Company actually uses the water for power generation during the period it has the right to use such water or whether or not any or all of such water is actually available in the Replacement Dam as a result of failure to completely fill the reservoir in the preceding storage seasons due to inadequate streamflow or as a result of the occurrence of any of the events described in Section 4.8 hereof.

SECTION 3.6. *Net Contract; Non-Terminability.* This is a "net contract," and the Falling Water Payments and the Supplemental Falling Water Payments required to be made hereunder or pursuant hereto by the Idaho Power Company shall be paid without notice (other than the notice contemplated by the second sentence of Section 3.4(A) hereof), or demand and without any offset, counterclaim, deduction, defense, abatement, suspension, deferment or diminution of any kind or for any reason.

SECTION 3.7. *Non-Termination of Falling Water Contract or Idaho Power Company Obligation.* This Falling Water Contract shall not terminate, nor shall the Idaho Power Company have any right to

terminate this Falling Water Contract or its obligations under this Falling Water Contract, or be entitled to the abatement, deferment or diminution of any Installment of the Falling Water Payments or of any of the Supplemental Falling Water Payments required to be made by the Idaho Power Company hereunder, nor shall the obligations of the Idaho Power Company be affected by reason of:

(A) any defect or impairment of the Constructing Agency's title to the Replacement Dam, or any portion thereof, during the construction of the American Falls Replacement Dam Program or the failure to complete substantially the construction of the Replacement Dam, the Related Facilities or the Water Quality Facilities;

(B) any defect or impairment of the Construction Agency's right to contract with the Idaho Power Company for the use of the Falling Water or to any right provided or intended to be provided by Constructing Agency to Idaho Power Company hereunder;

(C) the damage to or destruction of the Replacement Dam, the Water Quality Facilities or the Powerplant, or any portion thereof, by any cause, including without limitation, fire, earthquake, explosion, wind, hail or flood;

(D) the taking of the Replacement Dam or the Powerplant, or any portion thereof, or the use thereof, by any condemnation or other eminent domain proceeding;

(E) the prohibition, limitation or restriction on the construction, operation or maintenance of the Replacement Dam, the construction, operation or maintenance of the Water Quality Facilities, the construction, operation or maintenance of the Powerplant, or of the Idaho Power Company's rights hereunder to the utilization of the Falling Water at the Powerplant for power generation or the interference with the operation by the Idaho Power Company of the Powerplant or with any such right of use by any person;

(F) any eviction of the Construction Agency or the Idaho Power Company from the Replacement Dam or the Powerplant, or any portion thereof, by paramount title or otherwise or the loss of the License by the Idaho Power Company;

(G) any default on the part of the Constructing Agency under this Falling Water Contract, or under any other contract;

(H) any claim as a result of the transactions contemplated by the Indenture, the Spaceholder Contracts, the Government Contract, or of any other business dealings of the Constructing Agency or the Idaho Power Company;

(I) any mortgage, pledge, sale, assignment or transfer by the Idaho Power Company of the Powerplant or the use of the Falling Water, or any portion or portions thereof, or any portion of its rights under this Falling Water Contract, or under any contract;

(J) the impossibility or illegality of performance by any or all of the parties hereto, the parties to the Spaceholder Contracts, or the parties to the Government Contract;

(K) force majeure;

(L) any action or pending action of any court, administrative agency or other governmental authority;

(M) any order or decision of a court of competent jurisdiction, either state or Federal, which shall hold that the provisions of the Government Contract which provide for the disposition of the water accruing to the space of a Non-Participating Wateruser are invalid or in whole or in part unenforceable;

(N) any order of the Federal Power Commission pursuant to Article 48 of the License requiring the Idaho Power Company to pay annual charges for the purpose of recompensing the United States for the use, occupancy and enjoyment of the Replacement Dam; or

(O) any other cause, whether similar or dissimilar to the foregoing, any present or future law notwithstanding.

ARTICLE IV

GOVERNMENT CONTRACT

SECTION 4.1. *Plans for the Construction of 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:

(A) The construction of a Replacement Dam having:

(1) a reservoir with an active capacity of 1,700,000 acre-feet;

(2) a spillway, outlet works, and power penstocks capable of passing an approved design flood without exceeding a maximum water surface elevation of 4354.5 feet above mean sea level U.S.C.&G.S. datum;

(3) 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;

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

(5) 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.

(B) The construction of the Related Facilities.

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

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

(E) 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 to destroy the Old Island Powerplant unless first approved by the Contracting Officer.

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

(G) 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.

(H) 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.

SECTION 4.2. *Permits for Construction.* The Constructing Agency, pursuant to Article 11(a) of the Government Contract, has obtained from the Contracting Officer such special use permits and will, in accordance with Article 11(c) and (d) of the Government Contract, secure title to all lands not owned by the United States, or such interest therein, and all permits and licenses which are required for the Construction Agency to construct the Replacement Dam, the Related Facilities and the Water Quality Facilities designated in the Plans, Designs and Specifications approved by the Contracting Officer, as contemplated in this Falling Water Contract and in the Government Contract. The Idaho Power Company hereby grants to the Constructing Agency such licenses, permits and easements over and through the lands of the Idaho Power Company adjacent to the Replacement Dam which are within the project area as defined in the License as shall be necessary for the Constructing Agency to construct the Replacement Dam, the Related Facilities and the Water Quality Facilities according to the Plans, Designs and Specifications approved by the Contracting Officer, as contemplated in this Falling Water Contract and in the Government Contract.

SECTION 4.3. *Approval of Designs and Specifications.* As provided in the Act of December 28, 1973, and the Government Contract, the Idaho Power Company acknowledges that construction of the Replacement Dam, of each of the Related Facilities and of the Water Quality Facilities shall not be initiated until the Contracting Officer has approved in writing the Plan of Operation, the Construction Work Schedule and the applicable portion of the Designs and Specifications. The Constructing Agency and the Idaho Power Company shall abide by such Designs and Specifications, the Plan of Operation and the Construction Work Schedule.

SECTION 4.4. *Operation of Replacement Dam During Construction.* As provided in Article 13 of the Government Contract, the United States shall continue to operate and maintain the Existing Dam during the construction of the Replacement Dam. The Contracting Officer shall coordinate the storage and release of water to facilitate the construction of the Replacement Dam under the approved Plan of Operation. Daily operations under the approved Plan of Operation shall be determined by the Contracting Officer after consultation with the Constructing Agency and the Idaho Power Company, taking into account weather conditions, anticipated peak floodflows, irrigation water requirements, and construction activities.

If the Contracting Officer determines that the construction of the Replacement Dam or the Powerplant is interfering with the operation of the Existing Dam contrary to the approved Plan of Operation, the Constructing Agency, or the Idaho Power Company, or both, upon notification, shall immediately modify construction to permit the Contracting Officer to operate the Existing Dam or the Replacement Dam, or both, as contemplated in the approved Plan of Operation.

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 Idaho Power Company has heretofore advised the Constructing Agency and the Contracting Officer that such operation is acceptable to the Idaho Power Company.

At such time during the construction of the Replacement Dam that water control at the Existing Dam is transferred to water control at the Replacement Dam, the United States shall assume operation of the facilities which control the storage and release of water through the Replacement Dam.

SECTION 4.5. *Title to Replacement Dam, Related Facilities and Water Quality Facilities in United States upon Completion.* The Act of December 28, 1973, and the Government Contract provide that the United States shall take title to the Replacement Dam, the Related Facilities, and the Water Quality Facilities upon the determination by the Secretary that construction is substantially complete. Such title shall remain in the United States until otherwise provided by Congress. Upon substantial completion of the construction of the Replacement Dam and the Related Facilities the United States will operate and maintain the Replacement Dam and the Related Facilities as 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).

The Constructing Agency will execute such conveyances of title of the Replacement Dam, the Related Facilities, and the Water Quality Facilities as shall be necessary to vest title thereto in the United States, pursuant to the requirements of the Act of December 28, 1973, and the Government Contract. The Constructing Agency agrees that it will recognize, in any such instruments or conveyances of title to the Replacement Dam, the Related Facilities and the Water Quality Facilities, the continued right of the Idaho Power Company during the term of its License or any continuation or renewal thereof, to utilize the Falling Water at the Powerplant for power generation in accordance with the provisions of the License or any continuation or renewal thereof, within the limitations specified in the Government Contract, pursuant to Section 4 of the Act of December 28, 1973, and Articles 18(a) and (b) of the Government Contract, so long as the Idaho Power Company is not in default under the provisions of this Falling Water Contract. The Idaho Power Company recognizes that title to the Replacement Dam during the term of its License or any continuation or renewal thereof, shall be vested in the United States.

As provided in Article 14(d) of the Government Contract, upon the acceptance of the final transfer review memoranda, the correction of any construction deficiencies therein specified, the submission of the documents and equipment specified in Article 14(c) of the Government Contract and the giving of notice by the Secretary to the Constructing Agency, the Trustee and the Idaho Power Company, construction of the Replacement Dam, the Related Facilities and the Water Quality Facilities shall be deemed to have been completed. The determination of completion of construction by the Secretary in accordance with the applicable provisions of the Government Contract shall be binding upon the Idaho Power Company. The Idaho Power Company agrees to cooperate with the Constructing Agency, the Secretary and the Authorized Representatives in the furnishing of any or all of the documents or copies thereof and equipment set forth in Article 14(c) of the Government Contract as shall be necessary to aid in the determination of the Secretary that construction of the Replacement Dam, the Related Facilities and the Water Quality Facilities is complete.

SECTION 4.6. *Operation and Maintenance of Replacement Dam by United States.* The Idaho Power Company agrees to the provisions of the Government Contract governing operation and maintenance of the Replacement Dam. The following Articles of the Government Contract are incorporated herein and made a part hereof as follows:

(A) Article 16 which reads:

> The Replacement Dam will be operated by the United States in a manner so that (1) the present proportionate storage rights of the Spaceholders shall not be altered or changed except as provided herein 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.

(B) Article 18(d) which reads:

> In the event that the Contracting Officer 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 on April 17, 1975, by the United States Environmental Protection Agency, the Contracting Officer, after oral notice to the Idaho Power Company's American Falls Powerplant Chief Operator, may bypass part or all of such water around the Powerplant until satisfactory arrangements are made to meet such standard. The Contracting Officer in such circumstances will attempt to bypass only the amounts of water necessary to meet such standard. As contemplated in the Water Quality Facilities Agreement the Constructing Agency, the Contracting Officer, and the Idaho Power Company shall develop

operating criteria for the Water Quality Facilities and following mutual agreement on such criteria, the operation of the Water Quality Facilities or the bypassing of the water which is being released from the Replacement Dam around the Powerplant, or both, shall be in accordance with such criteria.

(C) Article 18(e) which reads:

The entitlement of the Idaho Power Company to utilize for power generation at the Powerplant the water released from the Replacement Dam under the provisions of this Article is subject at all times to scheduled interruptions for inspections, maintenance, and repairs of the Replacement Dam and at all times for any emergency operating situations relating to the Replacement Dam. In any such event, the Contracting Officer, in cooperation with the Constructing Agency and the Idaho Power Company, will endeavor to correct expeditiously such situations to permit the utilization for power generation at the Powerplant of the water released from the Replacement Dam.

(D) Article 18(f) which reads:

The Contracting Officer during the period that water is being released from the Replacement Dam for irrigation use by the Spaceholders, will provide to the Idaho Power Company from time to time schedules of anticipated water releases from the Replacement Dam in such form and detail as shall be mutually determined from time to time between the Contracting Officer and the Idaho Power Company and the Idaho Power Company will provide to the Contracting Officer its schedule of the amount of such releases anticipated by the Idaho Power Company to be used for power generation at the Powerplant. In the event the Idaho Power Company changes its schedule or in the event of an emergency, the Idaho Power Company shall promptly inform the Contracting Officer, so that the Contracting Officer can cause appropriate adjustments to be made in the outlet gates of the Replacement Dam. The providing to the Idaho Power Company by the Contracting Officer of schedules of anticipated water releases in no way guarantees that such schedules will be followed and the right to utilize the water released from the Replacement Dam for power generation at the Powerplant is subject to the provisions hereof, particularly to the limitation that the water releases from the Replacement Dam are to be determined at all times by the Contracting Officer. The Idaho Power Company, however, shall retain the right to schedule its stored water under its Spaceholder Contract and the water available to the Idaho Power Company, if any, under the provisions and limitations of (b) of this Article and schedules for the release of such water shall be provided by the Idaho Power Company.

(E) Article 22(a) which reads:

The Contracting Officer, after an opportunity has been offered to the Constructing Agency for consultation, shall have the right to make rules and regulations consistent with the provisions of this Government 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 Government Contract, and to supply necessary details of its administration which are not covered by express provisions hereof. Such rules and regulations shall (i) not limit the right of the Idaho Power Company, pursuant to the provisions of the Falling Water Contract, to utilize for power generation at the Powerplant the water released from the Replacement Dam so long as the Idaho Power Company is not in default thereunder, (ii) not limit the right of any Spaceholder to the stored water pursuant to the provisions of a Spaceholder Contract so long as the Spaceholder is not in default thereunder, or (iii) 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 payments due to the Constructing Agency from the Spaceholders under the Spaceholder Contracts. The Constructing Agency shall observe such rules and regulations.

SECTION 4.7. *Operation of Water Quality Facilities.* The Water Quality Facilities shall be operated and maintained in accordance with the provisions of the Water Quality Facilities Agreement as the same may be from time to time amended. The Constructing Agency shall notify the Administrator, Environmental Services Division, Idaho Department of Health and Welfare, when construction of the Replacement Dam has been commenced. The Constructing Agency shall notify the Regional Administrator, U. S. Environmental Protection Agency, Region X, upon receipt of the notice from the Contracting Officer pursuant to Section 14(d) of the Government Contract, that construction of the Replacement Dam, the Related Facilities, and the Water Quality Facilities has been completed.

SECTION 4.8. *No Liability for Water Shortage or Interruption.* No liability shall accrue against the United States or any of its officers, agents, or employees, or against 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 the officers, agents, or employees of the United States or the Constructing Agency, or other causes of whatsoever kind; nor shall the obligations of the Idaho Power Company to the Constructing Agency under this Falling Water Contract be reduced by reason of such shortages or interruptions.

SECTION 4.9. *Idaho Power Company Spaceholder Contract.* The Idaho Power Company's rights, duties and obligations as a Spaceholder are governed exclusively by the Spaceholder Contract of even date herewith entered into among the United States, the Constructing Agency, and the Idaho Power Company, and not by the terms and conditions of this Falling Water Contract, except as provided in Section 2.3(i) hereof.

SECTION 4.10. *Suspension or Termination of Use of Falling Water by Idaho Power Company upon Default.* In the event of the failure of the Idaho Power Company to pay when due all or any part of any Installment of the Falling Water Payments or any Supplemental Falling Water Payment as contemplated in this Falling Water Contract, the Trustee, on behalf of the Constructing Agency, or the Constructing Agency, shall request the Contracting Officer to take such steps pursuant to Article 18(c) of the Government Contract as shall be necessary to suspend all rights of the Idaho Power Company to the use of the Falling Water or any water accruing to the storage space of a Defaulted Spaceholder or of a Non-Participating Wateruser. The Secretary has, by his approval of this Falling Water Contract, acknowledged his duty, upon request of the Trustee on behalf of the Constructing Agency, or the Constructing Agency, to implement, or to cause to be implemented, the provisions of this Falling Water Contract and of the Government Contract which provide for the suspension or termination of the Idaho Power Company's right to the use of the Falling Water or water accruing to the storage space of a Defaulted Spaceholder or of a Non-Participating Wateruser.

SECTION 4.11. *Termination of Government Contract and Falling Water Contract.* The Constructing Agency will not, during the Original Term or any Renewal Term, consent to the termination of the Government Contract pursuant to Article 9(b) of the Government Contract, so long as the Idaho Power Company is not in default under any of the provisions of this Falling Water Contract and so long as the License or any continuation or renewal thereof is in full force and effect.

The Constructing Agency shall promptly advise the Idaho Power Company of the receipt of notice of termination of the Government Contract given pursuant to the provisions of Article 9(c) of the Government Contract, in which event this Falling Water Contract shall be deemed to have been terminated unless within 60 days after the giving of such notice by the Contracting Officer, the Constructing Agency has contracted to sell the Series 1976 Bonds or Interim Notes to construct or equip the Replacement Dam.

Either the Constructing Agency or the Idaho Power Company may terminate this Falling Water Contract after April 1, 1977, by the giving of notice to the other, unless prior to the giving of such

notice or within 60 days after the giving of such notice by the Idaho Power Company the Constructing Agency has contracted to sell the Series 1976 Bonds or Interim Notes to construct or equip the Replacement Dam.

ARTICLE V

Federal Power Commission License

SECTION 5.1. *Federal Power Commission License.* The Idaho Power Company has received a fifty (50) year License from the Federal Power Commission for the construction, operation, and maintenance by the Idaho Power Company of the Powerplant attached to the Replacement Dam, which License was initially conditioned upon commencement of construction of the Powerplant within two years from the effective date of the License, and completion within four years from the effective date of the License.

SECTION 5.2. *Documents Filed with Federal Power Commission.* The Idaho Power Company shall promptly file with the Federal Power Commission an executed copy of this Falling Water Contract, together with executed copies of all other contracts and documents required to be so filed in Article 36 of the License.

SECTION 5.3. *Compliance with License.* The Idaho Power Company shall comply with the provisions of the License and with the license for Project 2258 so long as the same shall be in full force and effect.

SECTION 5.4. *Notice of Amendment to License.* The Idaho Power Company shall give notice to the Contracting Officer and the Constructing Agency of any amendments to the License within 30 days after the effective date of any such amendment.

SECTION 5.5. *Failure to Renew License.* If after the expiration of the initial term of the License the Federal Power Commission fails to issue a renewal license to the Idaho Power Company, the Idaho Power Company and the Constructing Agency hereto will make all reasonable efforts to have the Federal Power Commission require as a condition to the granting of a license to a party other than the Idaho Power Company that (A) the new licensee shall pay the net investment of the Idaho Power Company in the Powerplant and such other amounts as are then permitted by law, plus reasonable severance damages of the Idaho Power Company, if any, and (B) the new licensee shall assume all contracts of the Idaho Power Company relating to the Powerplant.

ARTICLE VI

Authorized Representatives

SECTION 6.1. *Authorized Representatives.* 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 this 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.

There shall be three Authorized Representatives, consisting of the Authorized Company Representative designated by the Idaho Power Company, the Authorized Constructing Agency Representative designated by the Constructing Agency and the Authorized Spaceholder Representative designated by the Spaceholders, in the manner provided in the Spaceholder Contracts. 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 Representatives.

The Constructing Agency and the Idaho Power Company shall promptly notify each other and the Contracting Officer of the designation of their Authorized Representatives and of any subsequent changes in such designation. As provided in the Spaceholder Contracts, the Contracting Officer, 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.

SECTION 6.2. *Responsibilities of Authorized Representatives.* (A) The responsibilities of the Authorized Representatives prior to the Completion Date shall be:

(1) to approve the award of any construction or equipment contract in connection with the American Falls Replacement Dam Program;

(2) to establish general policies to be followed in the administration of this Falling Water Contract, in the construction of the American Falls Replacement Dam Program as it relates to this Falling Water Contract, and, to the extent such policies are relevant to the subject matter of this Falling Water Contract, in the construction of the Powerplant;

(3) 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;

(4) 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;

(5) 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

(6) to do such other things as are specifically assigned to the Authorized Representatives during the Construction Period.

(B) The responsibilities of the Authorized Representatives after the Completion Date shall be limited to:

(1) 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;

(2) 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

(3) 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.

SECTION 6.3. *Procedures of Authorized Representatives.* 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. The Authorized Representatives shall have no authority to modify any of the provisions of this 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.

SECTION 6.4. *Continued Responsibility of Constructing Agency.* With respect to all matters contemplated in Article IX hereof, the Constructing Agency shall consult with the Authorized Representatives in connection with the issuance of the Series 1976 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 Series 1976 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.

If, at any time, it is determined by a court of competent jurisdiction that any responsibilities assigned to the Authorized Representatives under the provisions of this Falling Water Contract constitute an undue delegation of power of 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 Representative appointed by the Constructing Agency.

ARTICLE VII

COORDINATION OF CONSTRUCTION OF REPLACEMENT DAM AND POWERPLANT AND ASSIGNMENT OF CONSTRUCTION COSTS

SECTION 7.1. *Coordination of Construction of Powerplant with Construction of Replacement Dam.* Pursuant to the provisions of Section 4 of the Act of December 28, 1973, the construction of the Powerplant by the Idaho Power Company shall be such that it is coordinated with the construction of the Replacement Dam pursuant to the approved Plan of Construction, Plan of Operation and the Designs and Specifications. To this end the Constructing Agency and the Idaho Power Company shall, at the earliest possible date after the execution hereof and to the extent not theretofore approved, cooperate one with the other in the submission by the Constructing Agency to the Contracting Officer for approval of the Plan of Construction and the Construction Work Schedule to the extent necessary to provide for the coordination of construction of the Powerplant with the construction of the Replacement Dam.

SECTION 7.2. *Constructing Agency in Owner Capacity during Construction.* The Constructing Agency, in accordance with the provisions of the Act of December 28, 1973, and the Government Contract, shall act in the capacity of owner of the Replacement Dam, the Related Facilities and the Water Quality Facilities during the Construction Period and in such capacity shall have and exercise all ownership responsibilities with respect thereto, except as provided by Article 13(c) of the Government Contract, until the United States shall take title thereto as contemplated in Article 14 of the Government Contract.

SECTION 7.3. *Construction Engineer.* During the Construction Period and the period of construction of the Powerplant the Constructing Agency and the Idaho Power Company shall each retain on a continuous basis as a construction engineer, an Independent Engineer of national reputation, recognized for knowledge, skill and experience in the design and construction of major dams and hydroelectric facilities, except that in lieu of an Independent Engineer Idaho Power Company may use its own engineering staff for such purpose.

SECTION 7.4. *Books and Records; Federal Power Commission Requirement.* The Authorized Representatives shall administer the maintenance and preservation, by the Constructing Agency of appropriate records and books of account, containing detailed entries of the Cost of Construction and, where

applicable to the construction of the American Falls Replacement Dam Program, of appropriate records and books of account of the Idaho Power Company containing detailed entries of all costs of engineering, financing and constructing the Powerplant. Accounting for all of such costs shall be in accordance with the requirements of the Federal Power Act, if any, and the requirements of the Federal Power Commission (presently FPC Form No. 6), as such requirements may be modified by the Federal Power Commission from time to time. The basic records and documents shall be made available to the Authorized Representatives, to the Contracting Officer, and to the Federal Power Commission for inspection during regular business hours upon reasonable notice and request therefor.

SECTION 7.5. *Assignment of Facilities of the American Falls Replacement Dam Program.* The Constructing Agency shall be responsible for the Cost of Construction of the American Falls Replacement Dam Program. In order to assist in the coordination of the construction of the Powerplant with the construction of the American Falls Replacement Dam Program and with particular reference to the determination of respective cost responsibilities as between the Constructing Agency and the Idaho Power Company, the Cost of Construction of the American Falls Replacement Dam Program shall be assigned and prorated as provided in Section 7.9 hereof to the following generally described items:

(A) Land and Land Rights.

(B) Structures and Improvements (Recreational Facilities, Fish and Wildlife Facilities only).

(C) Reservoirs, Dams and Waterways, including penstock gates and facilities on the upstream side of the Replacement Dam and the penstock extending through the Replacement Dam to the boundary line on the downstream face of the Replacement Dam.

(D) Roads, Railroads and Bridges.

SECTION 7.6. *Assignment of Powerplant Facilities.* The Idaho Power Company shall be responsible for the cost of construction of the Powerplant as contemplated in this Falling Water Contract. In order to assist in the coordination of the construction of the Powerplant with the construction of the American Falls Replacement Dam Program and with particular reference to the determination of the respective cost responsibilities as between the Constructing Agency and the Idaho Power Company, the cost of construction of the Powerplant shall be assigned and prorated as provided in Section 7.9 hereof to the following generally described Federal Power Commission Accounts in effect on January 1, 1970, as related to hydraulic production plant:

No. 300—Land and Land Rights

No. 331—Structures and Improvements (all except Recreational Facilities and Fish and Wildlife Facilities).

No. 332—Reservoirs, Dams and Waterways (only penstock and waterways downstream from the boundary line on the downstream face of the Replacement Dam).

No. 333—Waterwheels, Turbines and Generators.

No. 334—Accessory Electric Equipment, including control to intake and sluice gates.

No. 335—Miscellaneous Powerplant Equipment.

No. 397—Communication Equipment.

SECTION 7.7. *Completion Audits.* Within ninety (90) days after the Completion Date, the Authorized Representatives shall be supplied by the Constructing Agency with an audit of the Construction Fund and by the Idaho Power Company an audit of construction accounts established by the Idaho Power Company in connection with the construction of the Powerplant. The cost of the audit of the Construction Fund shall be included by the Constructing Agency as a Cost of Construction. The Idaho Power Company shall be responsible for the cost of the audit of the construction accounts established in connection with the construction of the Powerplant. Each such audit shall be made by a firm of independent certified public accountants, licensed, registered and entitled to practice as such

under the laws of the State of Idaho. A copy of each audit showing the Cost of Construction of the American Falls Replacement Dam Program and the costs of construction of the Powerplant, in reasonable detail, and the amount each party has theretofore paid for such purposes, shall be furnished promptly to the Constructing Agency, the Idaho Power Company, the Trustee, the Contracting Officer, and the Spaceholders.

SECTION 7.8. *Ownership of Powerplant.* At all times mentioned herein and after the construction of the Powerplant by the Idaho Power Company, the ownership of the Powerplant shall be in the Idaho Power Company in accordance with the provisions of the License.

SECTION 7.9. *Initial Assignment of Cost Responsibilities.* At the earliest practical date after the Designs and Specifications are approved by the Contracting Officer and after the final designs and specifications for the Powerplant are available, the Authorized Representatives, in consultation with the Independent Engineers, shall identify and assign to the Constructing Agency or to the Idaho Power Company by the cost accounts described in Section 7.4 hereof, the following:

(A) the work items and quantities of materials and excavation which are identifiable as related solely to the construction of the American Falls Replacement Dam Program or to the construction of the Powerplant, and

(B) the work items and quantities of materials and excavation which are so related both to the construction of the American Falls Replacement Dam Program and the construction of the Powerplant as not to be separately identifiable.

The assignment under (B) shall be to the Constructing Agency and the Idaho Power Company in accordance with criteria mutually agreed to by the Authorized Representatives. Such criteria shall be based on the ratio of cost savings to be derived from the particular item either by the function of the Replacement Dam or by the function of the Powerplant, if determinable, otherwise equally. The initial assignment of cost responsibilities shall be reduced to writing and copies shall be supplied to the Constructing Agency, the Idaho Power Company, the Contracting Officer, and the Authorized Spaceholder Representative. Such assignment of cost responsibilities for the American Falls Replacement Dam Program shall not be construed as an allocation of such costs for other than the primary irrigation purpose and the incidental purposes of the Minidoka Project.

SECTION 7.10. *Final Assignment of Cost Responsibilities.* Upon receipt from the Secretary of the notice of completion of construction of the Replacement Dam, the Related Facilities, and the Water Quality Facilities as provided for in Article 14(d) of the Government Contract, the Authorized Representatives, in consultation with the Independent Engineer, shall review the initial assignment of cost responsibilities, modify the same to conform to the actual work items and quantities of materials and excavation in accordance with the criteria previously established pursuant to Article 7.9 hereof, compute the actual Cost of Construction of the American Falls Replacement Dam Program which is the responsibility of the Constructing Agency, and to the extent applicable, the actual cost of construction of the Powerplant which is the responsibility of the Idaho Power Company. The review and modification shall also take into account any sums required to be paid by or to the Constructing Agency pursuant to Section 4 of 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. This final assignment of cost responsibilities shall be reduced to writing and copies supplied to the Constructing Agency, the Idaho Power Company, the Contracting Officer, and the Authorized Spaceholder Representative.

After completion of the above required computation, the Authorized Representatives shall give notice to the Constructing Agency of any then unreimbursed costs which were incurred by the Idaho Power Company and which are assigned pursuant to the final assignment of cost responsibilities, in

whole or in part, to the Constructing Agency. The Constructing Agency shall thereupon reimburse the Idaho Power Company from the Construction Fund for such costs as are itemized in the notice.

After completion of the above required computation, the Authorized Representatives shall give notice to the Idaho Power Company of any then unreimbursed costs which were incurred by the Constructing Agency and which are assigned pursuant to the final assignment of cost responsibilities, in whole or in part, to the Idaho Power Company. The Idaho Power Company shall thereupon reimburse the Constructing Agency for such costs as are itemized in the notice. Any such reimbursement shall be deposited into the Construction Fund.

SECTION 7.11. *Arbitration.* Any controversy or claim arising out of or relating to any assignment of cost responsibilities pursuant to this Article VII shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be introduced in any court having jurisdiction thereof.

ARTICLE VIII

ENGINEERING, FINANCING AND CONSTRUCTION OF AMERICAN FALLS REPLACEMENT DAM PROGRAM

SECTION 8.1. *Cost Estimates; Plans, Designs and Specifications.* The Constructing Agency shall arrange for the preparation of the Plans, Designs and Specifications for submission to the Contracting Officer. The Constructing Agency and the Idaho Power Company shall obtain cost estimates on the Designs and Specifications based on the initial assignment of cost responsibilities determined as provided in Section 7.9 hereof, together with such other costs and estimates as are necessary for the Constructing Agency and the Idaho Power Company to make such filings and obtain such approvals, consents and authorizations as may be necessary from any governmental unit, public agency or authority in connection with the construction of the American Falls Replacement Dam Program and the construction, operation, and maintenance of the Powerplant.

SECTION 8.2. *Approval of Plans, Designs and Specifications.* Pursuant to Article 10(b) of the Government Contract, the Constructing Agency is responsible for the preparation of Designs and Specifications for the American Falls Replacement Dam Program. As a condition precedent to the approval of the final Designs and Specifications for the construction of the Replacement Dam, the Constructing Agency must have submitted to, and received written approval from the Contracting Officer of, a Plan of Operation and the Construction Work Schedule. Final Designs and Specifications for any facility to be constructed or acquired as part of the American Falls Replacement Dam Program may not be issued by the Constructing Agency until the Contracting Officer has provided written approval thereof. The procedure for obtaining approval of the final Designs and Specifications which have not been approved prior to the execution of the Government Contract, is as set forth in Article 10(b) of the Government Contract.

SECTION 8.3. *Issuance of Designs and Specifications; Construction Bids; Cost Estimates.* Upon receipt by the Constructing Agency of the written approvals of the various Designs and Specifications by the Contracting Officer, the Constructing Agency shall issue specifications for the construction of the American Falls Replacement Dam Program and shall, in the manner then required by law, advertise for the submission of bids for the construction of the American Falls Replacement Dam Program. As contemplated in Section 10.1 hereof, the Idaho Power Company shall also request bids for construction of the Powerplant in accordance with its standard procedures. If mutually acceptable to the Constructing Agency and the Idaho Power Company, to the extent permitted by law, joint bidding for the construction of the Replacement Dam and the construction of the Powerplant shall be undertaken. After receipt of bids for the construction of the American Falls Replacement Dam Program and for the construction of the Powerplant by the respective parties hereto, but prior to the sale of the Series 1976 Bonds, the Authorized Representatives shall cause a final estimate of the Cost of Construction of the American

Falls Replacement Dam Program and a final estimate of the cost of construction of the Powerplant to be prepared. Included in the aforesaid final cost estimate shall be a separate identifiable estimate of the cost of the Water Quality Facilities to be included in the American Falls Replacement Dam Program.

After preparation of the final cost estimate for the American Falls Replacement Dam Program, the Authorized Representatives shall prepare a schedule setting forth the obligation of the Idaho Power Company, of each Spaceholder and, to the extent applicable, attributable to the space of each Non-Participating Wateruser, to share in the estimated Cost of Construction of the American Falls Replacement Dam Program[1]. The schedule shall be approved by the Constructing Agency and shall be filed with the Idaho Power Company, the Contracting Officer and each Spaceholder.

The Authorized Representatives shall next determine (A) the amount of money representing prepayments of Spaceholder obligations under Article 23 of the Spaceholder Contracts which should be transferred from the Prepayment Fund to the Construction Fund and (B) the amount of the Series 1976 Bonds which should be issued and the amount of the proceeds thereof deposited into the Construction Fund in order to pay the Cost of Construction. The Authorized Representatives shall thereafter recommend to the Constructing Agency the amount of the Series 1976 Bonds which should be issued.

After the Constructing Agency has determined the amount of the Series 1976 Bonds to be issued as contemplated in Section 9.3 hereof, the Authorized Representatives shall make any necessary adjustments in the schedules above contemplated to be made and shall thereupon give notice to the Contracting Officer, in accordance with Article 15(a) of the Michaud Division, Fort Hall Indian Reservation Spaceholder Contract, of the payments which will be due thereunder. The Constructing Agency shall, on or prior to the date of delivery of the Series 1976 Bonds, transfer from the Prepayment Fund to the Construction Fund the amount above computed by the Authorized Representatives which is attributable to Spaceholders prepayments.

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[1] (A) The obligation of the Idaho Power Company to share in the estimated cost of the American Falls Replacement Dam Program shall be equal to the sum of:

(1) $19,550,000,

(2) the estimated cost of the Water Quality Facilities determined under the provisions of this Section 8.3, and

(3) .486405 (see Section 9.7 hereof) times the amount by which the total estimated cost of the American Falls Replacement Dam Program exceeds $38,000,000.

(B) The obligation of each Spaceholder and, to the extent applicable, attributable to the space of each Non-Participating Wateruser, to share in the estimated cost of the American Falls Replacement Dam Program shall be computed in accordance with the following formula:

where:

SP — the Waterusers share of the estimated cost of the American Falls Replacement Dam Program

p — a Wateruser's percentage of total space

C — $38,000,000, less $19,550,000 and the estimated cost of Water Quality Facilities

A — the estimated cost of American Falls Replacement Dam Program over $38,000,000

B — Idaho Power Company's share of the estimated cost of the American Falls Replacement Dam Program over $38,000,000

then:

$SP = p(C + (A - B))$

SECTION 8.4. *Cost of Construction.* 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 Constructing Agency, Waterusers, or Idaho Power Company, as the cast 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 this 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 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 this 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.

SECTION 8.5. *Award or Rejection of Construction Bids.* If, in accordance with Section 8.3 hereof, joint bidding for the construction of the Replacement Dam and the construction of the Powerplant is undertaken by the Constructing Agency and the Idaho Power Company, each of the Authorized Representatives must concur in the award of any contract for construction or the purchase of equipment. If separate construction contracts are to be entered into for the construction of the Replacement Dam and the construction of the Powerplant, each of the Authorized Representatives must concur in the award of the contract for the construction of the Replacement Dam and in the award of the contracts for the purchase of equipment for the Replacement Dam; however the Authorized Constructing Agency Representative and the Authorized Spaceholder Representative need not concur in the award of contracts for the construction and equipping of the Powerplant. Nothing contained in this Falling Water Contract shall prevent the Board from exercising its discretion and rejecting any and all bids pertaining to the construction of the American Falls Replacement Dam Program or the purchase of equipment in connection therewith, and readvertising for bids.

SECTION 8.6. *Recomputation of Obligations.* If the amounts deposited into the Construction Fund pursuant to Section 8.3 hereof are or will be insufficient to pay in full the total Cost of Construction of the American Falls Replacement Dam Program, the Authorized Representatives shall from time to time revise the estimated Cost of Construction and determine the additional amounts necessary to be deposited into the Construction Fund from the Prepayment Fund and from the proceeds of Additional Bonds in order to pay the total revised Cost of Construction. The Constructing Agency shall, to the extent necessary, issue Additional Bonds as permitted under Section 207 of the Indenture for completion purposes and as contemplated in Sections 9.10 and 9.11 hereof.

In the event Additional Bonds need only be issued pursuant to Section 9.10 hereof within the initial authorization, the Authorized Representatives shall recompute the obligation of the Idaho Power Company, of each Spaceholder and, to the extent applicable, attributable to the space of each Non-Participating Wateruser, based on the revised Cost of Construction of the American Falls Replacement Dam Program and shall prepare a revised schedule of such obligations showing the increase over the initial determination for each.[1] Such schedule of obligation shall be approved by the Constructing Agency and shall be filed with the Idaho Power Company, the Contracting Officer and each Spaceholder. The Constructing Agency shall, on or prior to the date of delivery of the Additional Bonds transfer from the

[1] The respective obligations of the Idaho Power Company, each Spaceholder and, to the extent applicable, attributable to the space of each Non-Participating Waterusers, to pay the revised cost, shall be computed according to the computation set forth in Section 8.3 hereof, but substituting for the words "estimated cost" the words "revised cost" wherever they appear in the description of the computation.

Prepayment Fund to the Construction Fund the amount above computed by the Authorized Representatives which is attributable to Spaceholder prepayments. The Authorized Representatives shall also notify the Contracting Officer to increase the payments under the Michaud Division, Fort Hall Indian Reservation Spaceholder Contract accordingly.

In the event it is determined necessary to issue Additional Bonds pursuant to Section 9.11 hereof in excess of the initial authorization, and appropriate supplements to this Falling Water Contract and the Spaceholder Contracts are entered into, the Authorized Representatives shall recompute the obligation of the Idaho Power Company, of each Spaceholder and, to the extent applicable, attributable to the space of each Non-Participating Wateruser, in accordance with the principles of allocation of responsibility for the payment of the total Cost of Construction of the American Falls Replacement Dam Program in excess of the initial authorization set forth in Section 9.11 hereof and shall prepare a schedule showing the respective obligations in accordance therewith. Such schedule shall be consistent with the supplements to Spaceholder Contracts and the Falling Water Contract contemplated to be executed in Section 9.11 hereof, shall be approved by the Constructing Agency, and shall be filed with the Idaho Power Company, the Contracting Officer and each Spaceholder.

SECTION 8.7. *Computation of Actual Cost of Construction.* The Authorized Representatives, after computing the actual Cost of Construction as contemplated in Section 7.10 hereof, shall compute the obligations of Idaho Power Company, of each Spaceholder and, to the extent applicable, attributable to the space of each Non-Participating Wateruser, to pay the actual total Cost of Construction. If Additional Bonds are not issued under Section 9.11 hereof in excess of the initial authorization, then such obligations shall be computed in accordance with the computation set forth in Section 8.3 hereof, but substituting for the words "estimated cost" the words "total cost" wherever they appear in the description of the computation. If Additional Bonds are issued under Section 9.11 hereof in excess of the initial authorization, then such computation of the respective obligations shall be made in accordance with the provisions of Section 8.3 hereof as above modified and supplemented by the principles of allocation of the total Cost of Construction of the American Falls Replacement Dam Program set forth in Section 9.11 hereof and in any supplements to this Falling Water Contract and the Spaceholder Contracts. A schedule showing the final obligation of each to pay the actual total Cost of Construction shall be prepared, approved by the Constructing Agency and filed with the Idaho Power Company, the Contracting Officer and each Spaceholder. The Authorized Representatives shall then determine what sums, if any, should be retained in the Construction Fund in order to complete the American Falls Replacement Dam Program.

After the determination of the amounts needed to be retained in the Construction Fund in order to pay any Cost of Construction not then due and payable, the Constructing Agency shall cause a certificate to be filed with the Trustee pursuant to the provisions of Section 603 of the Indenture concerning the completion of the American Falls Replacement Dam Program. Such certificate shall direct the Trustee to dispose of any balance remaining in the Construction Fund, other than the amounts to be retained by the Trustee as provided in the certificate, as follows:

(A) That portion of the sums remaining in the Construction Fund attributable to prepayment by Spaceholders of their obligations under the Spaceholder Contracts shall be returned by the Trustee to the Spaceholders which made such prepayments in accordance with the percentage of active storage capacity of each such Spaceholder; and

(B) That portion remaining in the Construction Fund attributable to Spaceholders who elected to pay annual Spaceholder Bond Payments or to Idaho Power Company shall be transferred by the Trustee to the Bond Fund.

The Authorized Representatives shall also make a separate computation of the actual Cost of Construction, according to the assignment of such costs, of the Water Quality Facilities. This computation shall be filed with the Idaho Power Company, the Contracting Officer, and the Constructing Agency so that the computation contemplated to be made under paragraph 11 of the Water Quality Facilities Agreement can be completed by the Constructing Agency and the Idaho Power Company.

Any insurance rebates or dividends arising from policies taken out by the Constructing Agency in connection with the American Falls Replacement Dam Program shall, when received, be deposited into the Construction Fund. If any such rebates or dividends are received by the Constructing Agency subsequent to the closing of the Construction Fund, such rebates and dividends shall be distributed to the Spaceholders and the Idaho Power Company as their interests then appear.

ARTICLE IX

Issuance of Constructing Agency Bonds

SECTION 9.1. *Bonds; Source of Payment.* In order to provide funds for payment of all or part of the Cost of Construction of the American Falls Replacement Dam Program as set forth in Section 8.4 hereof, the Constructing Agency agrees that it will use its best efforts, at one time or from time to time, to sell and cause to be delivered to the purchasers thereof, one or more series of its Bonds in the principal amounts determined as provided in Sections 9.3, 9.10 and 9.11 hereof.

The Bonds shall be issued by the Constructing Agency pursuant to the provisions of the State Act then in force, and shall be payable solely from the special fund contemplated to be established in the State Act (Section 43-2201(D), Idaho Code).

SECTION 9.2. *Interim Notes; Idaho Power Company Guarantee of Interim Notes.* Either at or before the time the estimated Cost of the Construction of the American Falls Replacement Dam Program has been determined pursuant to Section 8.3 hereof, the Board, pursuant to the provisions of the State Act (Section 43-2202, Idaho Code), may determine it to be advisable and to be in the interests of the Constructing Agency to borrow funds temporarily in advance of the permanent financing for the payment of all or part of the Cost of Construction of the American Falls Replacement Dam Program by the issuance of one or more series of Interim Notes of the Constructing Agency. Such Interim Notes shall be issued, sold and delivered from time to time and shall be secured as provided in the State Act (Section 43-2202, Idaho Code), and the proceeds thereof shall be deposited in a fund in the hands of a bank or trust company doing business in the State of Idaho, to be disbursed by the Constructing Agency for the purposes specified in Section 8.4 hereof.

The Constructing Agency and the Idaho Power Company recognize that in order to meet the Construction Work Schedule for the American Falls Replacement Dam Program, it may be necessary to issue Interim Notes prior to the time that the Constructing Agency could market its Series 1976 Bonds. The Idaho Power Company, therefore, agrees that, in order to improve the marketability of any Interim Notes issued by the Constructing Agency, and in order to reduce the costs of borrowing represented by such Interim Notes, it will, with the consent of all regulatory agencies having jurisdiction over the Idaho Power Company for such purpose, whether state or Federal, and with the consent of all mortgage, indenture or other lien holders whose contracts or agreements with the Idaho Power Company require such consent for such purpose, simultaneously with the issuance of any Interim Notes by the Constructing Agency, to the issuance of which Interim Notes, the Idaho Power Company shall have prior thereto indicated its approval in writing, execute a guaranty agreement to the purchasers of such Interim Notes. Under the terms of the guaranty agreement the Idaho Power Company shall unconditionally guarantee to the holders at any time, and from time to time, of the Interim Notes of the Constructing Agency (a) the full and prompt payment of the principal of any Interim Note when and as the same shall become due, whether at the stated maturity thereof, by acceleration, or call for redemption or otherwise, and (b) the full and prompt payment of any interest on any Interim Note when and as the same shall become due, and shall agree to pay all expenses and charges (including court costs and attorneys' fees) paid or incurred by the holders of the Interim Notes in collecting any of the payments so guaranteed or in enforcing the guaranty agreement by the holders of the Interim Notes.

SECTION 9.3. *Determination of Details of Falling Water Payments, Spaceholder Bond Payments and Amount and Term of Series 1976 Bonds.* After the estimated Cost of Construction of the American

Falls Replacement Dam Program shall have been determined as provided in Section 8.3 hereof and the Authorized Representatives shall have recommended to the Board the amount of the Series 1976 Bonds to be sold, the Board, in consultation with the Authorized Representatives, shall then determine the date upon which the first Installment of Falling Water Payments will be made and the date upon which the first Spaceholder Bond Payments will be made, the date from which interest shall be deemed to accrue on the Falling Water Payments and the date from which interest shall be deemed to accrue on the Spaceholder Bond Payments. The Board in fixing the date upon which the first Installment of the Falling Water Payments will be made shall to the extent practicable provide that the date of the first Installment shall be not more than twelve (12) months from the date of the Series 1976 Bonds. The last Installment shall be forty (40) years from the year in which the Series 1976 Bonds first begin to mature either by their terms or by option of redemption from a sinking fund. The dates and terms of the Spaceholder Bond Payments fixed by the Board shall conform to those specified for the Falling Water Payments, taking into account the applicable provisions of the Spaceholder Contracts providing for the payment of the Spaceholder Bond Payments on April 1 of each year. The Board shall fix the due date of the Installments of the Falling Water Payments so that such payments shall become due and payable by the Idaho Power Company on the first day of the month preceding the date on which principal on the Series 1976 Bonds will fall due if such Installments are to be paid annually or on the first days of the months preceding the dates on which interest and principal, or interest alone, will fall due if such Installments are to be paid semi-annually.

The Board shall then determine the term of the Series 1976 Bonds, which term shall not exceed the maximum term specified in the proceedings taken in connection with the issuance of the Bonds and which shall be coordinated with the dates upon which the Installments of the Falling Water Payments and the Spaceholder Bond Payments will be made.

The Board shall thereupon fix the amount of the Series 1976 Bonds, which amount, within the Bond authorization, shall be sufficient, together with any prepayment of obligations under Spaceholder Contracts to be transferred into the Construction Fund from the Prepayment Fund to pay the estimated Cost of Construction of the American Falls Replacement Dam Program, and sufficient to pay, as to both principal and interest, any of the Interim Notes which shall have been issued by the Constructing Agency for such purposes pursuant to the applicable provisions of the State Act and which will be outstanding on the date of delivery of the Series 1976 Bonds. In determining the amount of the Series 1976 Bonds or of any Additional Bonds to be issued, the Constructing Agency shall increase the obligation of Idaho Power Company, determined under the provisions of Article VIII hereof, by the amount necessary to round off the total amount of Series 1976 Bonds or Additional Bonds to be issued to the next highest $5,000.

SECTION 9.4. *Details of Series 1976 Bonds.* After the amount and term of the Series 1976 Bonds shall have been determined by the Board, the Board shall thereupon fix the various details of the Series 1976 Bonds, including the date, maturity or maturities, sinking funds, serial or term nature, and option of redemption. In determining the date of the Series 1976 Bonds, the date upon which the first interest on the Series 1976 Bonds will become payable, the date upon which the first principal of the Series 1976 Bonds will become due, the maturity schedule or sinking fund of the Series 1976 Bonds, the redemption features of the Series 1976 Bonds, the Board shall take into account the requirements of Section 9.3 hereof with respect to the details of the Falling Water Payments and of the Spaceholder Bond Payments. Copies of the Indenture shall then be prepared in final form for execution. Such changes may be made in the February 1, 1976 draft of the Indenture which do not conflict with the provisions of this Falling Water Contract, the Spaceholder Contracts, the Government Contract, the Act of December 28, 1973, or the State Act and which are agreed to by the Constructing Agency and the Idaho Power Company, and bond counsel to the Constructing Agency in connection with the issuance and sale of the Series 1976 Bonds.

SECTION 9.5. *Option of Redemption of Series 1976 Bonds.* The Constructing Agency agrees that the Indenture shall provide that the Series 1976 Bonds shall be subject to redemption in whole or

in part at any time from and after ten (10) years from the date of the Series 1976 Bonds and at such premium or premiums which shall be established by the Board pursuant to the provisions of Section 9.4 hereof. If the Series 1976 Bonds are issued as term obligations with a mandatory sinking fund, the Series 1976 Bonds shall also be made subject to redemption in part on interest payment dates from the sinking fund established in the Indenture.

SECTION 9.6. *Sale of Series 1976 Bonds.* After the details of the Series 1976 Bonds shall have been fixed and determined by the Board as herein contemplated, and after the form of the Indenture shall have been agreed upon, the Constructing Agency shall sell the Series 1976 Bonds in such manner and at such price or prices as shall be determined by resolution of the Board, pursuant to the provisions of the State Act then in force. Prior to any offering of the Series 1976 Bonds the Constructing Agency shall obtain the opinion of bond counsel that interest on the Series 1976 Bonds will be excludable from Federal gross income taxes under the provisions of the Internal Revenue Code in effect on the date of the offering. No proposal or bond purchase agreement for the purchase of the Series 1976 Bonds shall be accepted or entered into by the Constructing Agency unless the Board shall determine and find that the proceeds of the Falling Water Payments together with the Spaceholder Bond Payments, computed as provided in Section 9.7 hereof, will be sufficient to pay the principal of and interest on the Series 1976 Bonds as the same shall fall due. Thereafter the Board shall complete the blanks in the Indenture and shall cause the Indenture to be executed by its duly authorized officers and the Trustee. Nothing contained in this Falling Water Contract shall prevent the Board from exercising its discretion and rejecting any and all proposals for the purchase of the Bonds, and advertising for bids or seeking new proposals for the purchase of the Bonds.

SECTION 9.7. *Computation of Falling Water Payments and Spaceholder Bond Payments.* The Falling Water Payments and the Spaceholder Bond Payments shall be calculated by the Authorized Representatives in accordance with the provisions of this Section 9.7. A schedule of the annual combined principal and interest requirements on the Series 1976 Bonds shall be prepared. The annual Installments of the Falling Water Payments shall consist of that portion of the annual combined principal and interest requirements on the Series 1976 Bonds as is represented by the proportion of the total of (A), (B) and (C) below to the principal amount of the Series 1976 Bonds:

(A) $19,550,000,

(B) the estimated cost of the Water Quality Facilities determined under the procedures of Section 8.3 hereof, and

(C) .486405[1] times the amount by which the total estimated cost of the American Falls Replacement Dam Program exceeds $38,000,000.

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[1] The .486405 is computed according to the following formula:

(i) Where .026471 equals the portion of total active storage capacity of Idaho Power Company in the Replacement Dam as a Spaceholder;

(ii) Where B equals the Idaho Power Company portion of the excess above $38,000,000 of the total estimated cost of the American Falls Replacement Dam Program in addition to its payment as a Spaceholder; and

(iii) Where A equals the cost of the American Falls Replacement Dam Program in excess of $38,000,000:

$$B + .026471\ (A-B) = .5A$$
$$.973529B = .473529A$$
$$B = \frac{.473529}{.973529}A = .486405A$$

The balance of the annual combined principal and interest requirements on the Series 1976 Bonds, after the deduction of the Falling Water Payments, shall constitute the annual Spaceholder Bond Payments, and shall be used by the Authorized Representatives in calculating the Schedule of Spaceholder Bond Payments for each of the Spaceholders which did not prepay its obligation as permitted in Article 23 of the Spaceholder Contracts and attributable to the space of each Non-Participating Wateruser to the extent applicable.[1]

SECTION 9.8. *Schedules of Falling Water Payments and Spaceholder Bond Payments.* After the receipt of a proposal for the purchase of the Series 1976 Bonds and the execution of a bond purchase agreement, but before the delivery of the Series 1976 Bonds to the Underwriters, the Authorized Representatives shall calculate the details of the Falling Water Payments and the Spaceholder Bond Payments and shall prepare the Schedule of Falling Water Payments and the Schedules of Spaceholder Bond Payments, and the percentage of the fees, charges and expenses of the Trustee and any paying agent bank for which each Spaceholder and the Idaho Power Company is responsible. Schedules of Spaceholder Bond Payments shall also be prepared with respect to the space attributable to Non-Participating Waterusers.

Each schedule shall be approved by the Trustee and shall be filed with the Trustee, the Idaho Power Company, the Contracting Officer and the Constructing Agency. Each Spaceholder which did not prepay its obligation shall be furnished with its applicable Schedule of Spaceholder Bond Payments. When the Schedule of Falling Water Payments and the Schedules of Spaceholder Bond Payments have been approved by the Trustee and filed as contemplated herein, each schedule shall be conclusively binding on the Idaho Power Company and each Spaceholder.

In the event the Constructing Agency issues Additional Bonds, either under the provisions of Section 9.10 or Section 9.11 hereof, the Authorized Representatives shall prepare a supplemental Schedule of Falling Water Payments and supplemental Schedules of Spaceholder Bond Payments for each Spaceholder which does not prepay its obligation and for the space attributable to Non-Participating Waterusers, in accordance with the calculations contemplated to be made by the Authorized Representatives in Section 9.10 and Section 9.11 hereof. Such supplemental schedules shall be approved by the Trustee, shall be filed and become conclusive as above provided with respect to the original schedules.

SECTION 9.9. *Delivery of Series 1976 Bonds; Disposition of Proceeds.* After the acceptance of the proposal of the Underwriters for the purchase of the Series 1976 Bonds and the execution of a bond purchase agreement with respect thereto, the acceptance of the bids for the construction of the Replacement Dam and the execution of the contracts for the construction of the Replacement Dam, the Series

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[1] Such calculation shall be made under the following formula:

where:

DS = each annual combined principal and interest requirement

DSsp = the amount of each annual combined principal and interest requirement attributable to non-prepaid space

P = total percentage of the active storage capacity attributable to non-prepaid space

p = the percentage of total storage capacity of a Spaceholder which did not prepay or attributable to a Non-Participating Wateruser (p = P)

K = 100% ÷ P

S = the total amount to be paid by each Spaceholder which did not prepay or attributable to the space of each Non-Participating Waterusers (S = DSsp)

then:

$S = (K)(p)(DSsp)$

1976 Bonds shall be delivered in accordance with the requirements of the bond purchase agreement for the purchase of the Series 1976 Bonds to be entered into between the Constructing Agency and the Underwriters, and the proceeds thereof shall be deposited in the Bond Fund and the Construction Fund, pursuant to Sections 601 and 602 of the Indenture, and disbursements shall be made from the Construction Fund, in accordance with the provisions of Section 602 of the Indenture. The Constructing Agency and the Idaho Power Company agree to cooperate, one with the other, in furnishing the Trustee with the documents referred to in Section 602 of the Indenture that are required to effect payments out of the Construction Fund.

SECTION 9.10. *Issuance of Additional Bonds Within Initial Authorization for Completion.* It is intended by the Constructing Agency that an amount of Bonds has been authorized and will be issued which will be sufficient, together with any prepayments, to pay the total cost of the American Falls Replacement Dam Program. If it is determined necessary, subsequent to the issuance of the Series 1976 Bonds, to issue all or part of the balance of any of the initially authorized but as then unissued Bonds in order 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 as permitted under Section 207 of the Indenture for completion purposes. In the event the balance of the initially authorized Bonds is issued, the annual Installments of the Falling Water Payments shall be increased by that portion of the annual combined principal and interest requirements on such series of Additional Bonds as is represented by the proportion of the total of (A) and (B) below (but as to each only to the amount of any initially authorized but as then unissued Bonds) to the principal amount of such series of Additional Bonds:

(A) any increased cost of the Water Quality Facilities determined under the procedures of Section 8.7 hereof over the estimated cost thereof determined under the procedures of Section 8.3 hereof, and

(B) .486405 (see Section 9.7 hereof) times the amount by which the total cost of the American Falls Replacement Dam Program determined under the procedures of Section 8.7 hereof less the increased cost of the Water Quality Facilities included in (A) above exceeds the higher of (1) the estimated cost of the American Falls Replacement Dam Program determined under the procedures of Section 8.3 hereof or (2) $38,000,000.

The Spaceholder Bond Payments shall be increased in an amount sufficient to pay the balance of the annual combined principal and interest requirements on such series of Additional Bonds not returned pursuant to the increased Falling Water Payments. The calculation of such increases shall be in accordance with the formula set forth in Section 9.7 hereof. 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.

SECTION 9.11. *Issuance of Additional Bonds in Excess of the Initial Authorization for Completion.* 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 and therefore it is determined necessary for the Constructing Agency to issue and sell a series of Additional Bonds as permitted under Section 207 of the Indenture for completion purposes in excess of the Bonds initially authorized to be issued, the Constructing Agency will, to the extent then legally permitted, issue and sell Additional Bonds in excess of the initial authorization under the conditions set forth in this Section 9.11:

(A) If the amount of such series of Additional Bonds is determined to be $1,000,000 or less, the Idaho Power Company shall enter into a supplement to this Falling Water Contract pursuant to which the annual Installments of the Falling Water Payments shall be increased by an amount necessary to pay principal of and interest on such series of Additional Bonds.

(B) If the amount of such series of Additional Bonds is determined to be an amount over $1,000,000 but not over $2,000,000:

(1) the Idaho Power Company shall enter into a supplement to this Falling Water Contract pursuant to which the annual Installments of the Falling Water Payments shall be increased by an amount sufficient to pay that portion of the annual combined principal and interest requirements on such series of Additional Bonds as is represented by the proportion of the total of (a) and (b) below to the principal amount of such series of Additional Bonds:

(a) $1,000,000,

(b) the remaining increased cost, if any, of Water Quality Facilities determined under the procedures of Section 8.7 hereof over the estimated cost thereof determined under the procedures of Section 8.3 hereof, which is in excess of the total of (i) the increased cost of the Water Quality Facilities provided for in Section 9.10(A) hereof and (ii) $1,000,000; and

(2) supplements to Spaceholder Contracts shall be executed pursuant to which increased Spaceholder Bond Payments will be made by Spaceholders, other than Idaho Power Company, which did not prepay their obligations, in an amount sufficient to pay the balance of the annual combined principal and interest requirements on such series of Additional Bonds not returned pursuant to this Falling Water Contract as so supplemented.

(C) If the amount of such series of Additional Bonds is determined to be an amount over $2,000,000:

(1) the Idaho Power Company shall enter into a supplement to this Falling Water Contract pursuant to which the annual Installments of the Falling Water Payments shall be increased by an amount sufficient to pay that portion of the annual combined principal and interest requirements on such series of Additional Bonds as is represented by the proportion of the total of (a), (b) and (c) below to the principal amount of such series of Additional Bonds:

(a) $1,000,000;

(b) the remaining increased cost, if any, of the Water Quality Facilities determined under the procedures of Section 8.7 hereof over the estimated cost thereof determined under the procedures of Section 8.3 hereof which is in excess of the total of (i) the increased cost of the Water Quality Facilities provided for in Section 9.10(A) hereof and (ii) $1,000,000; and

(c) .486405 (see Section 9.7 hereof) times the amount by which the total cost of the American Falls Replacement Dam Program determined under the procedures of Section 8.7 hereof less (i) the total increased cost of the Water Quality Facilities, (ii) the obligation of Idaho Power Company for other than Water Quality Facilities under Section 9.11(A)[1] hereof, and (iii) the obligations of Spaceholders other than Idaho Power Company under Section 9.11(B)[2], exceeds the higher of (1) the estimated cost of the American Falls Replacement Dam Program determined under the procedures of Section 8.3 hereof or (2) $38,000,000;

(2) supplements to Spaceholder Contracts shall be executed pursuant to which increased Spaceholder Bond Payments will be made by Spaceholders, other than Idaho Power Company, which did not prepay their obligations, in an amount sufficient to pay that portion of the annual combined principal and interest requirements on such series of Additional Bonds as is represented by the proportion of $1,000,000, less the amount determined pursuant to Section 9.11(B)(1)(b)[2] hereof to the principal amount of such series of Additional Bonds; and

[1] Calculated as if $1,000,000 or less Additional Bonds were to be issued in excess of the initial authorization.

[2] Calculated as if $2,000,000 or less Additional Bonds were to be issued in excess of the initial authorization.

(3) supplements to Spaceholder Contracts shall be executed pursuant to which increased Spaceholder Bond Payments will be made by Spaceholders, including Idaho Power Company, which did not prepay their obligations, in an amount sufficient to pay that portion of the annual combined principal and interest requirements on such series of Additional Bonds as is represented by the proportion of the principal amount of such series of Additional Bonds issued in excess of the initial authorization, less the amounts computed under Section 9.11(C)(1) and Section 9.11(C)(2) hereof, to the total principal amount of such series of Additional Bonds.

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.

The principal amounts of multiple series of Additional Bonds whether or not of the initial authorization shall be aggregated for all purposes of the computations required in Sections 9.10 and 9.11 hereof.

The increased obligations of Spaceholders computed according to (B)(2), (C)(2) and (C)(3) of this Section 9.11 shall be computed for each Spaceholder with the formula set forth in Section 9.7 hereof.

SECTION 9.12. *Obligation of Idaho Power Company after Initial Series of Bonds.* If the Constructing Agency is unable to market a series of Additional Bonds as contemplated in either Section 9.10 or 9.11, the Constructing Agency and the Idaho Power Company shall nevertheless use their best efforts, to the extent then permitted by law, to issue and sell an issue of obligations of the Constructing Agency which shall be guaranteed as to principal and interest by the Idaho Power Company, to pay such additional costs of the American Falls Replacement Dam Program which are not in excess of $1,000,000.

It is recognized that, except as specifically provided therein, the provisions of Sections 9.10 and 9.11 do not relieve the obligation of the Idaho Power Company to make increased Spaceholder Bond Payments pursuant to a supplemental Spaceholder Contract, in accordance with its percentage of total active storage capacity in the Replacement Dam.

SECTION 9.13. *Obligation of Idaho Power Company for Supplemental Falling Water Payments with Respect to Additional Bonds for Completion.* 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 hereof, 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 Spaceholders for the increased amounts if there is a default by any 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 in accordance with the provisions of Section 3.4 hereof.

SECTION 9.14. *Refunding Bonds.* 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 Series 1976 Bonds and Additional Bonds, if any, 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.

ARTICLE X

CONSTRUCTION OF THE POWERPLANT

SECTION 10.1. *Idaho Power Company Responsible for Powerplant Construction.* The Idaho Power Company shall be responsible for obtaining the necessary cost estimates, studies, licenses, permits, plans and specifications, construction contracts and other items necessary for the construction of the Powerplant, pursuant to the License, in coordination with the construction of the Replacement Dam, including the Plan of Operation and the Construction Work Schedule, so as not to impair the efficiency of the Replacement Dam to serve the other purposes of the Minidoka Project. The Idaho Power Company shall assume and pay all costs relating to the engineering, construction and equipping of the Powerplant, including the cost of any waterways or penstocks outside and downstream from the Replacement Dam as set forth in the approved Plans, Designs and Specifications.

SECTION 10.2. *Rights of Access to the Idaho Power Company for Construction, Operation, and Maintenance of the Powerplant.* The Idaho Power Company and its duly authorized agents shall, without charge, have such rights of access to the Replacement Dam and for ingress and egress on lands of the United States adjacent thereto as may be reasonably necessary to coordinate the construction of the Powerplant with the construction of the Replacement Dam and, after completion of construction of the Powerplant, for the proper operation and maintenance of the Powerplant by the Idaho Power Company.

SECTION 10.3. *Joint Facilities.* Any facilities which are not included in the American Falls Replacement Dam Program which may subsequently be required to be constructed, operated or maintained by the Constructing Agency and the Idaho Power Company on a joint basis must first be approved by the Authorized Representatives, and the necessary financing, construction, ownership or operation of such facilities shall be covered by special agreement between the parties hereto, to be added as an addendum to this Falling Water Contract, subject to the approval of the Contracting Officer.

SECTION 10.4. *Financing of Powerplant by Idaho Power Company.* The Idaho Power Company agrees that it will finance the construction of the Powerplant and will operate the Powerplant as contemplated in this Falling Water Contract, the License, the Government Contract and the Act of December 28, 1973. The preparation of all necessary designs and specifications for the construction of the Powerplant shall be the responsibility of the Idaho Power Company.

SECTION 10.5. *Liability.* The Constructing Agency shall be liable for its own acts and shall not be liable for the acts of others with regard to the construction, operation and maintenance of the Powerplant or with regard to the financing, construction, operation and maintenance of the American Falls Replacement Dam Program. The Constructing Agency shall require the contractor or contractors constructing the Replacement Dam, the Related Facilities and the Water Quality Facilities to carry liability insurance naming the Idaho Power Company as an additional insured party.

The Idaho Power Company shall be liable for its own acts and shall not be liable for the acts of others with regard to the construction, operation and maintenance of the Powerplant or with regard to the financing, construction, operation and maintenance of the American Falls Replacement Dam Program. The Idaho Power Company shall require the contractor constructing the Powerplant to carry liability insurance naming the Constructing Agency as an additional insured party.

SECTION 10.6. *Payment of Operation and Maintenance Expenses Related to Replacement Dam.* The Idaho Power Company shall pay directly to the Contracting Officer in each year such amounts as shall represent thirty-three per cent (33%) of the actual, direct costs of operation and maintenance of the Replacement Dam, exclusive of the reservoir. Such amounts shall be billed separately annually to the Idaho Power Company by the Contracting Officer under the same procedures, including examination of books and records, established for billing the Spaceholder Replacement Dam Operation and Maintenance Payments to the Spaceholders pursuant to the Spaceholder Contracts.

SECTION 10.7. *Supply of Energy to Operate and Maintain Replacement Dam.* As part of the consideration for the utilization by the Idaho Power Company of the Falling Water at the Powerplant for power generation within the limits specified in the Government Contract and as an additional payment for the operation and maintenance of the Replacement Dam, the Idaho Power Company shall, at a point on the line of division of ownership between the Replacement Dam and the Powerplant, which is a point accessible from the Powerplant, supply the energy required for control of the release of water from the Replacement Dam and the incidental lighting immediately adjacent thereto (exclusive of any highway and bridge lighting), at the required voltage and at a frequency of 60 cycles per second.

ARTICLE XI

EVENTS OF DEFAULT AND REMEDIES

SECTION 11.1. *Events of Default Defined; Uncontrollable Forces.* The following shall be "events of default" under this Falling Water Contract and the terms "events of default" or "default" shall mean, whenever they are used in this Falling Water Contract, any one or more of the following events:

(a) Failure by the Idaho Power Company to pay all or any part of any Installment of the Falling Water Payments specified in Section 3.1 hereof or failure by the Idaho Power Company to pay all or any part of the Supplemental Falling Water Payments specified in Section 3.4 hereof, at the times and places specified in this Falling Water Contract and (i) continuation of said failure for a period of five (5) days after notice by telegram or, if telegraph service is not available, after notice by mail given to it by the Constructing Agency that the Installment or payment referred to in such notice has not been received, or (ii) continuation of said failure for a period of twelve (12) days, shall constitute an event of default hereunder; or

(b) Failure by the Idaho Power Company to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder other than as referred to in subsection (a) of this Section, for a period of ninety (90) days after written notice, specifying such failure and requesting that it be remedied, given to the Idaho Power Company by the Board or the Trustee, unless the Board and the Trustee shall agree in writing to extension of such time prior to its expiration; or

(c) If the Idaho Power Company shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to the general bankruptcy act, as amended, or any similar Federal or state law, or shall be adjudged a bankrupt or become insolvent, or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the adjudication of the Idaho Power Company as a bankrupt or its reorganization under the general bankruptcy act or any similar Federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof, or if a receiver, trustee or liquidator (or similar official) of the Idaho Power Company or of more than one-third of the property of the Idaho Power Company shall be appointed in any proceeding or by any Federal or state officer or agency, and shall not be discharged within sixty (60) days after such appointment; or

(d) The occurrence of an "event of default" under Section 901 of the Indenture.

The provisions of (b) of this Section are subject to the following limitations: If by reason of uncontrollable forces the Idaho Power Company is unable, in whole or in part, to carry out its agreements on its part herein contained, other than the obligations of the Idaho Power Company contained herein to make the Falling Water Payments and the Supplemental Falling Water Payments, the Idaho Power Company shall not be deemed in default during the continuance of such inability. The term "uncontrollable forces" shall mean any cause beyond the control of the Idaho Power Company and

which, by the exercise of reasonable diligence, the Idaho Power Company is unable to overcome, and shall include, but not be limited to, an act of God, fire, flood, explosion, earthquake, strike, sabotage, an act of the public enemy, civil or military authority, including court orders, injunctions, and orders of government agencies with proper jurisdiction prohibiting acts necessary to performance hereunder or permitting any such act only subject to unreasonable conditions, insurrection or riot, an act of the elements, failure of equipment, or inability to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Nothing contained herein shall be construed so as to require the Idaho Power Company to settle any strike or labor dispute in which it may be involved. If the Idaho Power Company is rendered unable to fulfill any obligation by reason of uncontrollable forces it shall exercise due diligence to remove such inability with all reasonable dispatch.

SECTION 11.2. *Remedies on Default.* Whenever any event of default referred to in Section 11.1 hereof shall have happened and be subsisting, the Constructing Agency, or the Trustee on behalf of the Constructing Agency, may take any one or more of the following remedial steps:

(a) Whenever an event of default hereunder shall have occurred and be continuing, and notwithstanding the fact that the Constructing Agency or the Trustee may have some other remedy hereunder or by virtue hereof, to give a notice of intention pursuant to the provisions of Section 14.6 hereof to terminate this Falling Water Contract on a date specified in such notice, which date shall be not less than thirty (30) days after the date of giving such notice. If the Idaho Power Company is given notice as provided herein, the Idaho Power Company's interest in, to and under this Falling Water Contract shall terminate upon the date so specified in said notice, and the Idaho Power Company thereafter shall have no right, title or interest in, to or with respect to the Falling Water but Idaho Power Company shall remain liable as hereinafter provided.

(b) In the event of any termination of this Falling Water Contract as provided in subsection (a) above, the Constructing Agency or the Trustee, as provided in the Indenture, shall forthwith, notwithstanding any other provision of this Falling Water Contract to the contrary, be entitled to recover from the Idaho Power Company, 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 principal amount of the Bonds then outstanding as defined in the Indenture.

(c) Whenever an event of default hereunder shall have occurred and be continuing, the Constructing Agency or the Trustee on behalf of the Constructing Agency, shall have the right, then or at any time thereafter while any event of default hereunder shall continue, to request the Contracting Officer to suspend any and all rights of the Idaho Power Company to the use of the Falling Water or any water accruing to the storage space of a Defaulted Spaceholder or of a Non-Participating Wateruser upon not less than twelve (12) days' notice to the Idaho Power Company given as provided in Section 14.6 hereof. The Contracting Officer, acting with the consent of either the Constructing Agency or the Trustee, may, without further notice to the Idaho Power Company, suspend such rights of the Idaho Power Company and grant any or all of the suspended rights to any person for the duration of the suspension. Idaho Power Company agrees that, in addition to its other obligations under this Falling Water Contract, upon demand it will pay to the Trustee, the Constructing Agency and the Contracting Officer all expenses incurred in connection with such suspension and any grant of the suspended rights to another person, and that the Idaho Power Company will be and remain liable to make all payments, when due, required to be made by the Idaho Power Company hereunder, without regard to any such suspension and as if any suspended rights exercised by another person were exercised by the Idaho Power Company. The Constructing Agency, or the Trustee acting on behalf of the Constructing Agency, shall have the right from time to time to begin and maintain successive proceedings against the Idaho Power Company for the recovery of damages or for a sum equal to any and all Installments of the Falling Water Payments and Supplemental Falling Water Payments and any other payments required to be made by the Idaho Power Company pursuant to this Falling Water Contract, and to recover the same upon the liability of the Idaho Power Company herein provided. Nothing herein contained

shall be deemed to require the Constructing Agency or the Trustee to defer commencement of any such proceedings until the end of the Original Term of this Falling Water Contract.

(d) No suspension of any or all of the Idaho Power Company's rights to the use of the Falling Water under this Falling Water Contract shall be construed as an election on the part of the Construction Agency, the Trustee or the Contracting Officer to terminate the Idaho Power Company's interest in, to and under this Falling Water Contract unless a notice of intention be given to the Idaho Power Company or unless such termination be decreed at the instance of the Constructing Agency or the Trustee by a court of competent jurisdiction.

(e) The Constructing Agency, or the Trustee on behalf of the Constructing Agency, may take whatever action at law or in equity may appear necessary or desirable to collect the Falling Water Payments, or the Supplemental Falling Water Payments, or any other amounts payable by Idaho Power Company hereunder, then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Idaho Power Company under this Falling Water Contract.

Any amounts collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture.

SECTION 11.3. *No Remedy Exclusive.* No right or remedy herein conferred upon or reserved to the Constructing Agency, or to the Trustee on behalf of the Constructing Agency 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 an event of default hereunder. The failure of the Constructing Agency, or the Trustee on behalf of the Constructing Agency, to insist at any time upon the strict observance or performance by the Idaho Power Company of any of the provisions of this Falling Water Contract, or to exercise any right or remedy provided for in this Falling Water 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 Falling Water Payment or Supplemental Falling Water Payment required to be made hereunder with knowledge of the breach of any provisions of this Falling Water Contract, shall not be deemed a waiver of such breach. In addition to all other remedies provided in this Falling Water Contract, the Constructing Agency and the Trustee on behalf of the Constructing Agency, 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 Falling Water Contract, or to a decree concerning performance of any of the provisions of this Falling Water Contract, or to any other remedy legally allowed to the Constructing Agency or to the Trustee on behalf of the Constructing Agency.

If any proceeding shall be brought for the enforcement of any right or remedy provided for in this Falling Water Contract in which it shall be determined that any event of default hereunder has occurred and was continuing at the time of commencement thereof, the Idaho Power Company 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.

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 Falling Water 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 Falling Water 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.

SECTION 11.4. *No Additional Waiver Implied by One Waiver.* Any waiver by a party of its rights with respect to an event of default under this Falling Water Contract, or with respect to any other matter arising in connection with this Falling Water Contract, shall not be deemed to be a waiver with respect to any other matter arising in connection with this Falling Water Contract. No delay in asserting or enforcing any rights hereunder shall be deemed a wavier of such rights.

ARTICLE XII

SPECIAL COVENANTS

SECTION 12.1. *Compliance with Laws, Rules and Regulations.* The Idaho Power Company and the Constructing Agency agree in the performance of their obligations hereunder to comply fully with all laws, rules and regulations pertaining to the subject matter of this Falling Water Contract including particularly the Federal Power Act, the Idaho Public Utilities Act and the rules and regulations of the Federal Power Commission and the Idaho Public Utilities Commission, and to the extent that their operations may be subject to the jurisdiction of any state or Federal regulatory agencies, subject to the terms of all valid and applicable orders of any of such agencies. This Falling Water Contract is subject to the laws of the State of Idaho and is subject to the approval of any state or Federal regulatory agency having jurisdiction thereof. The Idaho Power Company agrees to pay any and all costs and expenses of itself and the Constructing Agency in effecting compliance with any such laws, rules, regulations and orders which apply to construction, operation or maintenance of the Powerplant. Before incurring any such costs or expenses the Constructing Agency shall consult with the Idaho Power Company.

SECTION 12.2. *No Warranty of Suitability.* The Constructing Agency makes no warranty, either express or implied, as to the Replacement Dam or the Falling Water or that the Replacement Dam or the Falling Water or the design or the operation of the Replacement Dam will be suitable for Idaho Power Company's purposes or needs.

SECTION 12.3. *Rights of Access to the Constructing Agency and the United States for Construction, Operation, and Maintenance of the American Falls Replacement Dam Program.* The Constructing Agency and the Contracting Officer and their duly authorized agents, shall, without charge, have such rights of access to the Powerplant and for ingress and egress on all lands which are within the project area as defined in the License, as may be reasonably necessary to coordinate the construction of the Powerplant with the construction of the Replacement Dam, to permit the proper operation and maintenance of the Existing Dam during the construction of the Replacement Dam including the interim operation of the water control structures (as defined in the Government Contract) of the Replacement Dam at such time during construction that water control at the Existing Dam is transferred to water control at the Replacement Dam, and upon substantial completion of the Replacement Dam and Related Facilities for the proper operation and maintenance thereof by the United States.

The United States shall have the right to utilize without charge in the operation and maintenance of the Minidoka Project those lands of the United States which are within the area covered by the Idaho Power Company's License for the construction and operation and maintenance of the Powerplant, so long as such use by the United States is not inconsistent with or does not interfere with the uses intended in the License.

SECTION 12.4. *Corporate Existence of Idaho Power Company; Mergers and Consolidation.* The Idaho Power Company agrees that during the Original Term of this Falling Water Contract it will maintain its corporate existence, will continue to be a corporation either organized under the laws of or duly qualified to do business as a foreign corporation in the State of Idaho, and will not dispose of all or substantially all of its assets nor consolidate with nor merge into another corporation unless the acquirer of its assets or the corporation with which it shall consolidate or into which it shall merge shall be a corporation organized and existing under the laws of one of the States of the United States of America and shall be qualified and admitted to do business in the State of Idaho, shall be or as a result of the

transaction shall become a public utility, shall have a net worth immediately subsequent to such acquisition, consolidation or merger at least equal to that of the Idaho Power Company immediately prior to such acquisition, consolidation or merger, and shall assume in writing all of the obligations of the Idaho Power Company herein.

SECTION 12.5. *Approvals.* Whenever under the provisions of this Falling Water Contract the approval of the Idaho Power Company is required or the Constructing Agency is required to take some action at the request of the Idaho Power Company, such approval or such request shall be made by the Authorized Idaho Power Company Representative unless otherwise specified in this Falling Water Contract and the Constructing Agency or the Trustee shall be authorized to act on any such approval or request and the Idaho Power Company shall have no complaint against the Constructing Agency or the Trustee as the result of taking any such action.

SECTION 12.6. *Financial Reports of Idaho Power Company and Constructing Agency.* The Idaho Power Company agrees to furnish to the Constructing Agency and to the Trustee a copy of each of the financial statements certified by a certified public accountant that it customarily furnishes to its stockholders. The Constructing Agency agrees annually to furnish to the Idaho Power Company, the Trustee, the Contracting Officer and each of the Spaceholders, a copy of a report of an independent certified public accountant, or state auditing official, if appropriate, reflecting in reasonable detail the status of each fund or account created under the terms of the Indenture, including the amount and source of the deposits therein, the amount and purpose of withdrawals, and the balance therein at the beginning and end of each fiscal year, as defined in the Indenture.

SECTION 12.7. *Non-Arbitrage Certifications and Representations.* The Constructing Agency and the Idaho Power Company covenant and represent to each other that:

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

(a) All of the principal proceeds of the Series 1976 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 Series 1976 Bonds.

(b) At least 85% of the expendable proceeds of the Series 1976 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 Series 1976 Bonds.

(c) The Constructing Agency, prior to the issuance of the Series 1976 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.

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

(e) 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 Series 1976 Bonds.

(f) Accrued interest received upon the sale of the Series 1976 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 Idaho Power Company that the proceeds of the Series 1976 Bonds will be used in a manner that would cause the Series 1976 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 Idaho Power Company, there are no facts or circumstances that would materially change the foregoing conclusion.

SECTION 12.8. *Non-Arbitrage Covenants.* The Constructing Agency and the Idaho Power Company jointly and severally covenant that so long as any of the Series 1976 Bonds shall remain outstanding and any provision in this Falling Water Contract or the Indenture to the contrary notwithstanding with respect to an investment of moneys, whether such moneys were derived from the proceeds of the Series 1976 Bonds, or from any other source, no use will be made of such moneys which, if such use could have been reasonably expected on the date of the issue of the Series 1976 Bonds, would have caused the Series 1976 Bonds to be classified as an "arbitrage bond" within the meaning of Section 103(d) of the Internal Revenue Code of 1943, as amended, and further jointly and severally covenant to comply with the requirements of said Section 103(d) and any regulations promulgated thereunder.

ARTICLE XIII

ASSIGNMENT

SECTION 13.1. *Conditions on Assignments by Idaho Power Company.* This Falling Water Contract may be assigned in whole or in part, and the use of the Falling Water may be assigned as a whole or in part, by the Idaho Power Company without the necessity of obtaining the consent of either the Constructing Agency or the Trustee, but only upon obtaining the consent of the Secretary, subject, however, to each of the following conditions:

(a) No assignment (other than pursuant to Section 12.4 hereof) shall relieve the Idaho Power Company from primary liability for any of its obligations hereunder, and in the event of any such assignment the Idaho Power Company shall continue to remain primarily liable for payment of the Falling Water Payments and the Supplemental Falling Water Payments, and for the performance and observance of the other covenants, representations, warranties and agreements on its part herein provided to be performed and observed by it to the same extent as though no assignment has been made.

(b) The assignee of the Idaho Power Company shall expressly assume in writing the obligations of the Idaho Power Company hereunder to the extent of the interest assigned.

(c) The Idaho Power Company shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Constructing Agency, the Secretary and the Trustee a true and complete copy of each such assignment or assumption or obligation as the case may be.

SECTION 13.2. *Assignments or Dissolution by Constructing Agency.* The Constructing Agency may assign its interest in, and pledge any moneys receivable under this Falling Water Contract, to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds, and applicable premium, if any, but each such assignment or pledge shall be subject and subordinate to the rights of the Idaho Power Company under this Falling Water Contract. The Constructing Agency, to the extent it may legally so covenant, covenants and agrees with Idaho Power Company that it will not dissolve or otherwise abandon its existence so long as this Falling Water Contract is in existence without the written consent of the Contracting Officer and the Idaho Power Company, and so long as any of the Bonds are outstanding, without the written consent of the Trustee.

ARTICLE XIV

GENERAL

SECTION 14.1. *Original Term; Liability of Constructing Agency.* This Falling Water Contract shall become effective upon its execution by the Constructing Agency and the Idaho Power Company and its approval by the Contracting Officer and, unless extended as hereinafter provided in Section 14.2

hereof, or unless this Falling Water Contract shall have been terminated in accordance with the provisions of Section 4.10 hereof, the Original Term of this Contract shall terminate on March 31, 2025, being fifty (50) years from the date of the License. The Idaho Power Company irrevocably waives, to the extent that it lawfully may, any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance, any suit in equity, action at law, or other legal or equitable proceeding brought against it for specific performance of the obligation of Idaho Power Company to make the Falling Water Payments and the Supplemental Falling Water Payments of this Falling Water Contract by the Constructing Agency, any receiver or the Trustee, as well as any defense to any other such proceeding which might be brought against the Idaho Power Company to enforce any of the rights or remedies provided for in this Falling Water Contract based on the fact that, at the time any payment hereunder is requested, the Constructing Agency is or may be insolvent. The Idaho Power Company's remedy for any act or omission by the Constructing Agency shall be limited to an action or actions for specific performance of this Falling Water Contract by the Constructing Agency; provided, however, as long as any Bonds are outstanding no such action shall be taken which will reduce the amount of the Installments of the Falling Water Payments or the amount of the Supplemental Falling Water Payments needed to pay principal of, premium, if any, or interest on the Bonds or will interfere with the right of the Trustee to receive and apply such Falling Water Payments and Supplemental Falling Water Payments. It is recognized by the Constructing Agency and the Idaho Power Company that the end of the term of this Falling Water Contract shall not preclude the other from seeking damages for any cause of action which shall have arisen prior to the end of the term of this Falling Water Contract.

SECTION 14.2. *Renewal Term.* If, after expiration of the Original Term of the License of the Idaho Power Company for the construction, operation, and maintenance of the Powerplant, such License is continued or renewed this Falling Water Contract shall thereupon be continued in effect during such period of continuation or the Renewal Term; provided, however, that the Constructing Agency and the Idaho Power Company may mutually consent to such annual payments to be made by Idaho Power Company to the Constructing Agency on behalf of the Spaceholders as shall be agreed to at that time.

SECTION 14.3. *Execution of Documents.* The Constructing Agency and the Idaho Power Company, upon request by the other, shall make, execute and deliver any and all documents reasonably required to implement the terms of this Falling Water Contract.

SECTION 14.4. *Supplements and Amendments.* Prior to the sale of the Series 1976 Bonds this Falling Water Contract may be supplemented or amended with the consent of the Secretary, for the purpose of complying with any directive, order or license requirement of the Federal Power Commission or of any other regulatory agency having jurisdiction over the parties and the Powerplant, or of any order, judgment or decree of any court of competent jurisdiction, either state or Federal, provided that no such supplement or amendment shall reduce the obligation of the Idaho Power Company to pay the Falling Water Payments or the Supplemental Falling Water Payments.

Subsequent to the sale of the Series 1976 Bonds, 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 Falling Water Contract may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee and of the Secretary.

SECTION 14.5. *Spaceholders Third Party Beneficiaries.* The parties hereto recognize that the Spaceholders on whose behalf Spaceholder Contracts have been executed with the Constructing Agency in accordance with Section 3 of the Act of December 28, 1973, are in fact third party beneficiaries of the obligations of Idaho Power Company to make the Falling Water Payments and the Supplemental Falling Water Payments pursuant to this Falling Water Contract. The rights of Spaceholders shall be governed by the provisions of the Spaceholder Contracts entered among the Spaceholders, the Contracting Officer, and the Constructing Agency. The monetary return to the Constructing Agency as a result of this Falling Water Contract, shall be utilized to defray the Cost of Construction of the American Falls Replacement Dam Program as hereinabove agreed for the proportionate benefit of all Spaceholders on whose behalf

contracts are executed for the repayment of their proportionate share of the Cost of Construction of the American Falls Replacement Dam Program.

SECTION 14.6. *Notices; Manner of Giving; Duplicate Copies to United States and Trustee.* Any notice, demand, or request provided for in this Falling Water Contract, or given or made in connection with this Falling Water Contract to or upon the Constructing Agency, shall be deemed to be properly given or made if delivered or sent by registered mail to 1132 Locust Street, Twin Falls, Idaho 83301. Any notice, demand, or request provided for in this Falling Water Contract to or upon the Idaho Power Company shall be deemed to be properly given or made if delivered or sent by registered mail to 1220 Idaho Street, Boise, Idaho 83701. Any notice, demand, or request provided for in this Falling Water Contract, or given or made in connection with this Falling Water Contract to or upon the United States, shall be deemed to be properly given or made if delivered or sent by registered mail to Regional Director, Pacific Northwest Region, Bureau of Reclamation, Box 043, 550 West Fort Street, Boise, Idaho 83724.

Any notice, demand or request provided for in this Falling Water Contract or given in connection with this Falling Water Contract to or upon the Trustee shall be deemed to be properly given or made if delivered or sent by registered mail to the corporate trust office of the Trustee.

Any notice, demand or request provided for in this Falling Water Contract or given in connection with this Falling Water Contract to or upon the Spaceholders shall be deemed to be properly given or made if delivered or sent by registered mail to the Authorized Spaceholder Representative.

A duplicate copy or copies of each notice given hereunder by either the Constructing Agency or the Idaho Power Company to the other shall also be given to the United States and the Trustee. A duplicate copy of each notice given by either Constructing Agency or Idaho Power Company to either the Trustee or the United States shall also be given to the other party hereto.

The designation or the address of any person specified in this Section may be changed at any time by written notice to the other persons whose addresses are set forth in this Section.

SECTION 14.7. *Benefit of Falling Water Contract.* This Falling Water Contract shall inure to the benefit of and shall be binding upon the Constructing Agency, the Idaho Power Company, and their respective successors and assigns, subject, however, to the limitations contained in Sections 12.4, 13.1 and 13.2 hereof.

SECTION 14.8. *Severability.* In the event any provision of this Falling Water Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 14.9. *Amounts in Bond Fund.* Any amounts remaining in the Bond Fund upon expiration or sooner termination of the Original Term as provided in this Falling Water Contract, 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 this Falling Water Contract and the Indenture, shall be paid by the Trustee to the Constructing Agency for disposition in accordance with the provisions of the Spaceholder Contracts and to Idaho Power Company in the proportion that the respective obligations of the Spaceholders and of Idaho Power Company to pay the principal of the Bonds as determined under Sections 9.7, 9.10 and 9.11 hereof bears to the total principal amount of the Bonds.

SECTION 14.10. *Execution in Counterparts.* This Falling Water Contract 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.

SECTION 14.11. *Choice of Law.* This Falling Water Contract shall be construed and governed exclusively by the applicable laws of the State of Idaho.

SECTION 14.12. *Waiver of Subrogation Rights.* No payment of any kind to the Trustee or the holders of the Bonds by the Idaho Power Company pursuant to the provisions hereof, including without limitation Section 11.2 hereof, shall entitle the Idaho Power Company, by subrogation to the rights of the holders of the Bonds in respect of which such payment is made or otherwise, to any payment by the Constructing Agency or to any payment required to be made by a Spaceholder pursuant to a Spaceholder Contract or out of the property of Constructing Agency in enforcement of the Indenture or otherwise, except after payment in full of the entire principal of and premium, if any, and interest on the Bonds and any and all indebtedness evidenced by the Bonds or the Indenture, or provision for such payment satisfactory to the Trustee.

IN WITNESS WHEREOF, the Constructing Agency and the Idaho Power Company have caused this Falling Water Contract 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

(SEAL)

Attest:

/s/ DIANNE BRIDEGUM
Secretary

IDAHO POWER COMPANY

By: /s/ JAMES E. BRUCE
President

(SEAL)

Attest:

/s/ PAUL L. JAUREGUI
Secretary

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 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)

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)

SPACEHOL
HOLDINGS OF SPACE IN AMER. ..N FALLS RESERVOIR

Water User	Contract No.	Date	Date of Supplemental Contract	Approximate Acre-Feet	Percent of Active Capacity —Percent to Distribute Construction Costs	Percent to Distribute Annual Replacement Dam Operation and Maintenance Costs	Percent to Distribute Annual Water Quality Operation and Maintenance Costs
UPPER VALLEY ORGANIZATIONS							
Aberdeen-Springfield Canal Company(1)	14-06-W-24	10-22-52	9-26-63	32.572	1.9160	1.8276	1.9680
Andrus, Ray	14-06-100-7771	5-16-73	None	191	0.0112	.0107	.0115
The Blackfoot Irrigating Company	14-06-W-39	12-12-52	2-6-63	12.763	0.7508	.7161	.7712
The Butte and Market Lake Canal Company	14-06-W-38	12-12-52	2-6-63	4.666	0.2745	.2618	.2819
Clement Brothers, a partnership	14-05-100-7446	9-9-72	None	71	0.0042	.0040	.0043
Corbet Slough Ditch Company	14-06-W-12	12-12-52	2-6-63	3.396	0.1998	.1905	.2052
The Enterprize Canal Company, Ltd.	14-06-W-15	12-12-52	2-1-63	8,923	0.5249	.5007	.5392
Enterprise Irrigation District	14-06-100-1912	6-2-60	None	10,188	0.5993	.5716	.6156
Harrison Canal and Irrigation Company	14-06-W-30	12-12-52	2-1-63	12,025	0.7074	.6747	.7266
Michaud Division, Fort Hall Indian Reservation	Memorandum of Agreement	4-25-57	None	47,700	2.8059	2.6764	2.8822
New Sweden Irrigation District	14-06-W-14	12-12-52	2-1-63	25,731	1.5136	1.4438	1.5547
Poplar Irigation District	14-06-W-45	12-18-52	2-1-63	673	0.0396	.0378	.0407
Progressive Irrigation District	14-06-W-47	12-18-52	1-31-63	12,485	0.7344	.7005	.7544
Rudy Canal Company, Limited	14-06-W-37	12-12-52	2-1-63	2,649	0.1558	.1486	.1601
Snake River Valley Irrigation District	14-06-W-35	12-12-52	2-1-63	26,367	1.5510	1.4795	1.5932
The Trego Ditch Company	14-06-W-23	12-12-52	2-6-63	1,314	0.0773	.0737	.0794
LOWER VALLEY ORGANIZATIONS							
American Falls Reservoir District(2)	14-06-W-59	5-13-54	3-14-60	460,170	27.0688	25.8199	27.8048
American Falls Reservoir District No. 2	14-06-W-73	10-14-54	2-2-60	400,000	23.5294	22.4438	24.1692
Hillsdale Irrigation District	Ilr-252	7-22-23 as amended and supplemented	None	41,146	2.4203	2.3087	2.4862
Milner Low Lift Irrigation District	14-06-W-92	1-7-55	1-21-66	45,687	2.6875	2.5635	2.7605
North Side Canal Company, Limited(1)	14-06-W-28	12-12-52	2-29-60	118.380	6.9635	6.6422	7.1529
A & B Irrigation District	14-06-100-2368	2-9-62	None	47,593	2.7996	2.6704	2.8757
Idaho Power Company	Ilr-733	6-15-23	None	45,000	2.6471	7.1388(3)	None

(1) Also has space through American Falls Reservoir District.

(2) American Falls Reservoir District holds this space for the following:

UPPER VALLEY ORGANIZATIONS	Percent of Capacity	Approximate Acre-Feet
Aberdeen-Springfield Canal Co.	1.3541	23,019
Martin Canal Co.	0.0839	1,426
Woodville Canal Co.	0.3356	5,706
LOWER VALLEY ORGANIZATIONS		
North Side Canal Co., Ltd.	16.4020	278,834
Twin Falls Canal Co.	8.8932	151,185
	27.0688*	460,170

* Erroneously typed as 27.0687 in supplemental contract of 3-14-60.

(3) Computed on the basis of article 17 of the contract of 6-15-23.

EXHIBIT I

NON-PARTICIPATING WATERUSERS

HOLDINGS OF SPACE IN AMERICAN FALLS RESERVOIR

Water User	Contract No.	Date	Date of Supplemental Contract	Approximate Acre-Feet	Percent of Active Capacity —Percent to Distribute Construction Costs	Percent to Distribute Annual Replacement Dam Operation and Maintenance Costs	Percent to Distribute Annual Water Quality Operation and Maintenance Costs
UPPER VALLEY ORGANIZATIONS							
Burgess Canal and Irrigating Company..	14-06-W-41	12-18-52	2-1-63	9,496	0.5586	.5328	.5738
Dilts Irrigation Company, Limited	14-06-W-32	12-12-52	2-6-63	886	0.0521	.0497	.0535
Falls Irrigation District	14-06-100-851	12-9-55	9-15-64	23,300	1.3706	1.3074	1.4079
Idaho Irrigation District	14-06-W-33	12-12-52	2-6-63	22,911	1.3477	1.2855	1.3844
The Lenroot Canal Company	14-06-W-22	12-12-52	2-1-63	3,868	0.2275	.2170	.2337
The Martin Canal Company(1)	14-06-W-36	12-12-52	9-10-73	580	0.0341	.0326	.0350
Peoples Canal & Irrigation Company ...	14-06-W-44	12-18-52	1-31-63	21,415	1.2597	1.2016	1.2940
Reid Canal Company	14-06-W-10	12-12-52	2-6-63	2,549	0.1499	.1430	.1540
Utah-Idaho Sugar Company ..... (Osgood tract)	Ilr-538	6-6-25	(2)	13,459	0.7917	.7552	.8132
The Woodville Canal Company(1)	14-06-W-49	12-18-52	9-10-73	341	0.0200	.0191	.0206
LOWER VALLEY ORGANIZATIONS							
Burley Irrigation District	14-06-W-48	12-18-52	1-25-60	157,942	9.2907	8.8621	9.5433
Minidoka Irrigation District	14-06-100-1833	2-2-60	None	83,563	4.9155	4.6887	5.0491

(1) Also has space through American Falls Reservoir District.

(2) Has contract for 15,852 acre-feet—is entitled to an additional 5,378 acre-feet of which total 7,771 is transferred to Jackson. Contract to accomplish this is in progress.

EXHIBIT H

440

832.

JAN 26 1976

Memorandum

To: Commissioner, Washington, D.C.
Attention: 440
Assistant

From: Regional Director, Boise, Idaho

Subject: Proposed Idaho Power Company Spaceholder Contract, American Falls Replacement Dam Program, Minidoka Project, Idaho-Wyoming

Enclosed are three copies of the subject proposed contract which we indicated in our letter of December 12, 1975, would be submitted at a later date.

The major problem which we have encountered in securing approval of this proposed contract is the applicability of certain provisions of the June 15, 1923, contract between the United States and the Idaho Power Company. It was finally concluded that the 1923 contract could not be renegotiated within the present time frame and, therefore, the proposed Spaceholder Contract sets forth the intent of the United States and the Idaho Power Company to meet and review the existing contract for possible revision.

While the proposed contract does reaffirm the rights of the Idaho Power Company under its existing contract, it is recognized that the Act of December 28, 1973, and the provisions of the Government and Spaceholder Contracts take precedence over the provisions of the existing contract wherever and to whatever extent there is a conflict. We believe that this adequately protects the interests of the United States.

Enclosure (3)

cc: Field Solicitor, Boise, Idaho
(w/copy of enclosure)

(Signed) N. H. Moore

L. Vinsonhaler:mm 1-23-76

Note: Only 5 contracts received & distributed as follows:
3 - Commissioner
1 - Field Solicitor, Boise
1 - Region 1 Official Files

Exhibit X

AMERICAN FALLS DAM, UPPER SNAKE RIVER PROJECT, IDAHO

UNIVERSITY OF MONTANA
LIBRARY
AUG 9 1973
GOVERNMENTS DEPARTMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER RESOURCES

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

ON

S. 1528

A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO CONSTRUCT, OPERATE, AND MAINTAIN A REPLACEMENT DAM FOR THE EXISTING AMERICAN FALLS DAM OF THE UPPER SNAKE RIVER BASIN PROJECT, IDAHO, AND FOR OTHER PURPOSES

S. 1529

A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO ENTER INTO AGREEMENTS WITH NON-FEDERAL AGENCIES FOR THE REPLACEMENT OF THE EXISTING AMERICAN FALLS DAM, UPPER SNAKE RIVER PROJECT, IDAHO, AND FOR OTHER PURPOSES

MAY 10, 1973



Printed for the use of the Committee on Interior and Insular Affairs

U.S. GOVERNMENT PRINTING OFFICE
93-376 O WASHINGTON · 1973

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AMERICAN FALLS DAM, UPPER SNAKE RIVER PROJECT, IDAHO

THURSDAY, MAY 10, 1973

U.S. SENATE,
SUBCOMMITTEE ON WATER AND POWER RESOURCES
OF THE INTERIOR AND INSULAR AFFAIRS COMMITTEE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., room 3110, Dirksen Senate Office Building, Hon. Frank Church, presiding.

Present: Senators Church [presiding], Hatfield, Hansen, and McClure.

Also present: Jerry T. Verkler, staff director, and Daniel A. Dreyfus, professional staff member.

OPENING STATEMENT OF SENATOR FRANK CHURCH

Senator CHURCH. The hearing will please come to order.

The purpose of this hearing before the Water and Power Resources Subcommittee today is to take testimony on S. 1528 and S. 1529, bills to authorize the construction of a replacement for the existing American Falls Dam which is a feature of the Minidoka Reclamation project in southeastern Idaho.

The American Falls Dam was constructed by the Bureau of Reclamation in 1927. A chemical reaction between the cement and the aggregate in the concrete which comprises the dam has led to gradual deterioration in the structure.

The Bureau has concluded that the dam does not meet current safety standards, and severe restrictions have had to be imposed upon the amount of water which can be stored in the reservoir.

The reservoir behind the American Falls Dam represents nearly half the usable storage on the main stem of the Upper Snake River. Nearly 900,000 acres of land receive irrigation water from the reservoir, and it is also the backbone of a coordinated reservoir system which is operated to provide irrigation, flood control, recreation, fish and wildlife conservation, and hydroelectric power throughout the basin.

The storage in the reservoir is presently limited to less than 65 percent of its usable capacity and even greater restrictions will become necessary with increasing deterioration.

In dry years, the present restriction will cause serious irrigation water shortages. The economy of the basin is heavily based upon irrigated agriculture and will be critically affected by crop failures.

Furthermore, important flood control, recreation, and fish and wildlife purposes will be adversely affected.

The threat to the well-being of the people of the region requires that the American Falls Dam be replaced at the earliest possible time. The bills we are taking testimony on today represent two approaches to accomplish the replacement.

One bill, S. 1528, would authorize the Secretary of the Interior to construct, operate, and maintain a replacement dam as a conventional project under the reclamation program. The replacement would be an entirely feasible undertaking under the criteria currently in use to evaluate Federal reclamation projects.

Unfortunately, in recent years, reclamation project proposals have seldom been endorsed by the administration. The construction of authorized projects has been inadequately funded, and congressional additions to budget requests have been impounded. The water users of the American Falls Reservoir, faced with the threats of crop failure, have sought other means of expeditiously replacing the dam.

The second measure, S. 1529, would accommodate a plan developed by the water users in which they would finance and construct a replacement dam without Federal assistance. The Secretary of the Interior would be authorized to take title to the dam and operate it as a feature of the Federal Upper Snake River Reclamation project.

We are hopeful that today's hearing will resolve some of the uncertainties surrounding each of these alternative approaches and will assist us in choosing the best course of action.

The texts of both measures and the legislative reports of the executive agencies will be included in the hearing record at this point.

[The texts of S. 1528 and S. 1529 and Department reports follow:]

93D CONGRESS
1ST SESSION

S. 1528

IN THE SENATE OF THE UNITED STATES

APRIL 10, 1973

Mr. CHURCH (for himself and Mr. MCCLURE) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To authorize the Secretary of the Interior to construct, operate, and maintain a replacement dam for the existing American Falls Dam of the Upper Snake River Basin project, Idaho, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized to construct, operate, and maintain a replacement dam and reservoir for the existing American Falls Dam and Reservoir, Upper Snake River project, Idaho-Wyoming, in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto) and the provisions of this Act and the plans set

Statement of
Idaho Power Company
93rd Congress, First Session
in Support of
American Falls Dam Replacement S.1529
Before the Senate
Interior and Insular Affairs Subcommittee
on Water and Power Resources

My name is Robert A Hogg, Boise, Idaho. As Vice President of Idaho Power Company, I developed a proposal to assist the American Falls Spaceholders, through their contracting agency, the American Falls Reservoir District, to finance the repayment of a replacement dam at American Falls. I have been retained in a consulting capacity for the Company on this project since my retirement.

After the American Falls Spaceholders came to us to evaluate possible involvement in a Falling Water contract, the Idaho Power Company developed a proposal to assist the Spaceholders in restoring the American Falls dam to acceptable safety standards at the earliest practical date. A copy of the proposal submitted to the Executive Committee of the Spaceholders February 27, 1973 is attached hereto. The Company's primary interests are as follows:

1. The Company's electric generating capability, energy sales and revenue are directly affected by water conditions including water storage capacity which has been limited in the American Falls reservoir.

2. The economy of the Company's service area in southern Idaho, which includes the 900,000 acres of land depending on the American Falls stored water to finish the yearly crops, is exposed

to a severe setback as long as the American Falls storage limitation is in effect.

3. The Company presently owns and operates a 27,000 KW power plant below the American Falls dam.

4. The Company is a spaceholder in the American Falls reservoir.

The Idaho Power Company is a hydroelectric generating system and is keenly aware of factors which affect water conditions, including storage of water. Furthermore, Idaho Power Company's peak load is established by irrigation load, which also is dependent upon water conditions. The water conditions have opposite effects on the system, since with low water conditions the generation is low; however, at the same time, the electric load is high because the irrigators use more electricity to lift water from wells and streams to make up the irrigation water deficiency. The American Falls storage limitation will contribute to this adverse effect, because 600,000 acre-feet of reservoir space cannot be used to store flood flows for later release.

The Company's service area includes most of the 900,000 acres of irrigated land depending on a full capacity of 1,700,000 acre-feet of water in the American Falls Reservoir being available for the final and finishing irrigation. About 2-1/4 million acres of land are irrigated in the Company's service area; therefore,

nearly 40 percent of highly productive land is exposed to reduced production under adverse water conditions.

An indication of the seriousness of the change in irrigation water supply as a result of the restriction is illustrated by comparison of the number of years over a 40-year period of study the American Falls reservoir would be emptied at the end of the irrigation season without the limitation and with the limitation. The reservoir would be emptied at the end of the irrigation season about 16 times without the storage limitation. With the storage limitation, the number of years the reservoir would be empty is 26. Since the reservoirs on the Upper Snake are operated on a coordinated basis, the Jackson Lake Reservoir in the Grand Teton National Park would be emptied 4 years out of 40, but with the storage limitation on American Falls, operational studies indicate the Jackson Lake would be emptied 9 years out of 40 years.

The degree of economic loss will vary with the severity of water shortage, but there is no question that there will be an adverse economic loss in some amount before the American Falls dam can be replaced under the most favorable construction schedule.

The Idaho Power Company presently owns and operates a 27,000 KW power plant below the present American Falls dam. The power plant does not utilize the full head available at the site. The

Company's proposal includes the necessity of building a new power plant under a 50-year FPC license to develop the full energy potential of the site.

The present plant produces on the average about 146 million KWH and the new plant is expected to generate on an average 370 million KWH, or about 2-1/2 times as much energy. The installed capacity of the plant will be 100,000 KW, about 3-3/4 times the present plant.

The Company's proposal to the irrigators is made possible by the increased energy generation and installed capacity of a new plant built under the 50-year FPC license. The Company is able to utilize the type of power available from this project, and such power is not available from another source at a lower cost; consequently, the resulting high cost is justified.

The Company's interest as a spaceholder is very modest in contrast to the irrigators' interest; however, the Company's 45,000 acre-feet of storage capacity is important in meeting the Company's power supply requirements in the irrigation season.

The Company's proposed plant and use of the Company's storage rights through the Company's downstream plants will generate on the average about 420 million kilowatt-hours per year. This is equivalent to about 210,000 tons of coal per year, or 28 million gallons of oil per year, or 3-3/4 billion cubic feet of natural

gas. The hydro electric plant will be a source of clean electric energy without the environmental problems associated with coal, oil or gas.

In Idaho Power Company's opinion, an early approval of S-1529:

1. Will be a significant benefit to the irrigators in southern Idaho;
2. Will minimize the adverse economic effects of the American Falls storage limitation on the economy of southern Idaho because of possible early completion;
3. Will be a benefit to the nation's taxpayers, since no money is requested for the dam construction.

I urge your favorable decision on S.1529.

RAHogg:d
4/30/73

Proposed
AMERICAN FALLS DAM
Replacement Plan

The American Falls dam was constructed in the mid-1920's and first stored water in the 1926-27 period. The irrigators paid about half of the cost of the dam in cash and the balance has been or is being paid for by the irrigators. The Idaho Power Company acquired 45,000 acre-feet of primary storage and 255,000 acre-feet of secondary storage in the reservoir.

In 1929 a chemical reaction in the concrete of the dam was discovered, which has caused the concrete to swell or expand; however, the strength of the structure has declined at a very slow rate. Recently the strength of the structure has been seriously questioned. The relatively small columns supporting the bearings of the spillway gates are showing advanced effects of the chemical reaction. Reservoir operations are now different than planned in the 1920's by the addition of Palisades (1956), Island Park (1938) and Teton (under construction) and ice loading on the dam is an important consideration now, while it was not considered necessary when American Falls dam was designed. The result of these changes as well as data obtained from core drilling is the imposition of a storage limitation by the Bureau of Reclamation in the interest of safety, which limits the storage to about 1,100,000 acre-feet in the reservoir with a capacity when full of 1,700,000 acre-feet.

95-375 O - 73 - 8

The storage limitation is an extreme hazard and exposure to the irrigators since about 900,000 acres of land are dependent on American Falls storage for late season irrigation. Historically, with present storage capacity (including full capacity at American Falls), July and August have been below full requirements in 4 years out of 40 years, or on average, 1 year out of 10. With reduced storage capacity this exposure will be increased.

The storage limitation may be corrected by replacing the present dam with a new dam or rehabilitating (repairing) the present dam. The USBR have concluded that the right and proper thing is to replace the dam with a new dam, and have made the following estimated construction cost (July 1972 prices), and have allocated the costs to various functions, as follows:

Construction Cost (July 1972) - $1,000's

Dam and Reservoir	$ 22,906
Penstock future power	1,454
Highway Improvement	1,861
Remove old dam	2,100
Permanent operating facilities	143
General service equipment	43
Basic health & safety	88
Fishing mitigation	546
Fish & wildlife enhancement	196
Flood forecasting	131
Total	$ 29,468
Interest during construction	2,293
TOTAL	$ 31,761

Construction Cost Allocation - $1,000's

		IDC	Total
Irrigation	$18,971	$1,477	$20,448
Flood Control	4,348	338	4,686
F & W Enhancement	1,520	117	1,637
Recreation	1,226	96	1,322
Highway Improvement	1,861	145	2,006
Future Power	1,454	113	1,567
Basic Health & Safety	88	7	95
Total	$29,468	$2,293	$31,761

Repayment planned as follows:

Irrigation by water users	$18,659
Fish & Wildlife Enchancement - Non-federal body	101.5
Power (deferred)	1,543
Total Reimbursable	$20,303.5

The probable schedule which might be followed with USBR construction has been estimated to require 8-10 years before the new dam could be completed. Presumably the storage limitation would prevail during this period; however, it might be relaxed slightly one or two years before completion as the elevation of the new dam was raised during construction.

The Idaho Power Company has several interests in the American Falls dam problem. as follows:

1. As a spaceholder - the Company has primary storage in the amount of 45,000 acre-feet.

Exhibit Y

REPLACEMENT OF THE AMERICAN FALLS DAM IN IDAHO

PART 1

HEARING

BEFORE THE

SUBCOMMITTEE ON
WATER AND POWER RESOURCES

OF THE

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

FIRST SESSION

ON

H.R. 6781, H.R. 6782, and S. 1529

TO AUTHORIZE THE REPLACEMENT OF THE AMERICAN FALLS DAM IN IDAHO

HEARING HELD IN BURLEY, IDAHO
OCTOBER 6, 1973

Serial No. 93–33

Printed for the use of the
Committee on Interior and Insular Affairs

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NOTE.—The Chairman of the Full Committee is an ex officio voting member of this Subcommittee. The first listed minority member is counterpart to the Subcommittee chairman.

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REPLACEMENT OF THE AMERICAN FALLS DAM IN IDAHO

SATURDAY, OCTOBER 6, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER AND POWER RESOURCES
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Burley, Idaho.

The subcommittee met, pursuant to notice, at 10 a.m., in Burley, Idaho, the Honorable Harold T. Johnson presiding.

Mr. JOHNSON. The Subcommittee on Water and Power Resources will come to order.

The purpose of our hearing today is to take testimony on the American Falls Dam problem. Measures pending are H.R. 6781 by Congressmen Hansen and Symms and H.R. 6782 also by Congressmen Hansen and Symms. Likewise pending before the committee is S. 1529, originally introduced by Senators Church and McClure.

The legislation is to authorize the Secretary of the Interior to enter into agreements with non-Federal agencies for the replacement of the existing American Falls Dam, Upper Snake River project, Idaho, and for other purposes.

The pattern that is followed by the Water and Power Resources Subcommittee of the House is, prior to holding hearings in Washington, we always come to the field for a hearing that allows all local interests to testify. We have an opportunity to look at the area that is going to be affected by the project. In this instance we will look at the reservoir, dam, and powerplant that are now in place, and see some of the area of service.

This morning we had a good opportunity to view from the air the dam, powerplant, the adjacent community, the reservoir, and also a good portion of the lands that are being served by this facility at the present time.

I am Congressman Johnson from California, the chairman of this subcommittee. I have with me Mr. Don Clausen from California, a member of the subcommittee. Mr. Ketchum from California, a member of the subcommittee, and Mr. Towell from the State of Nevada, a member of the subcommittee. We are very fortunate this morning to have with us the entire Idaho delegation.

I want to say that we are very happy to be here in Burley. Through the activities of this subcommittee and its performance, we have never failed to pass a bill when we have held a hearing and visited an area. So the field hearings have been well accepted by the balance of the subcommittee in Washington and by the full committee and by the House of Representatives. The Senators can speak for themselves.

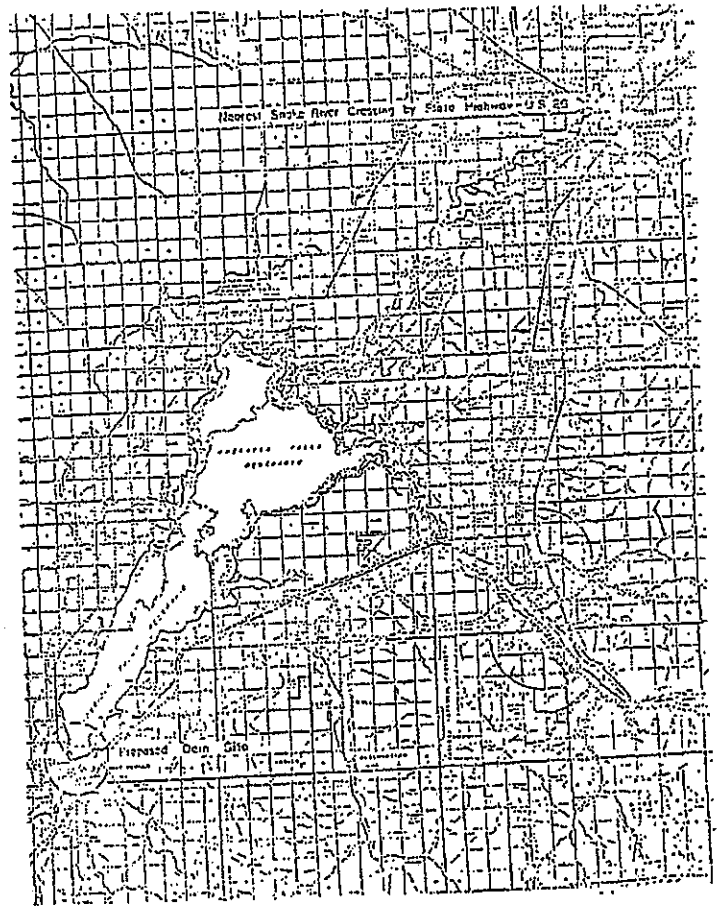
of the critical time as possible. If the construction schedule proposed cannot be met, another, and perhaps a most critical year, could be lost.

It is extremely important that the new dam be built as expeditiously as possible. The impounded reservoir waters provide the life support system for almost a million acres of irrigated land. It is equally essential that the highway portion be funded adequately so that transportation of farm products, processed foods, and employees can be accomplished.

Respectfully submitted,

V. N. RICHARDSON, P.E.,
State Highway Engineer.

Attachment.



Mr. ANDRUS. I think I shall summarize some of it, although it is not that lengthy.

Seldom can a Governor of any State support a project as enthusiastically as I can support this project today. The replacement of the American Falls Dam and the river crossing is as necessary as it was when we traveled to Washington earlier this year. The only change is the sense of urgency.

It has been brought up—Mr. Towell from Nevada spoke to this point, and I would like to make further summary of this in that regard, that we at the State level are hoping, as Mr. Sullivan pointed out, to start our proceedings with a portion of the river crossing in December. Congressmen, we just simply can't wait.

Traditionally reclamation dams have been able to carry some water over from one year to another. We had the restriction last year for the first time.

You flew over it. I think you saw very vividly the problems we face. The sense of urgency has been increased because this year we have had a dry year. If we have another year next year with the carryover in reduced capacity we have very serious problems.

Mr. Clausen's question pertained to who will this project serve, and Senator McClure responded to it. I am confident he answered it fully, but just so there will be no misunderstanding on anyone's part, this water storage in American Falls is not for new development or new land coming in. It is for existing land that has been under crop for many, many years. We are not asking you to put any funds into projects so we can develop new land that might be in competition to those of you that travel here from other States.

We do not ask for millions of Federal tax dollars to do for Idaho what Idahoans can and will do for themselves. Rather, we ask of you gentlemen to give us, the people of the State of Idaho, the spaceholders, and the private industry the permission to rebuild the structure ourselves. I do speak for all the people in the State of Idaho in saying that the reconstruction of the Idaho River crossing is not a regional or sectional type need. It is for the entire State of Idaho, because as it has been pointed out, this river flows through our entire State and the water is not only used there but it is used over and over again as it goes through.

Agriculture is our No. 1 industry, and each of these projects throughout the Snake River and then through the Columbia River network are tied together.

I vigorously support S. 1529 and the amendment for the bridge fund that is before you today because it offers, I believe, the speediest solution to our dilemma.

It is important you understand the relationship of this proposal to other legislation that might be pending in Congress. We seek replacement of a weakened structure that holds only a portion of the water it used to hold so to provide existing irrigation to farmlands, not new development. What we seek is a replacement for a weakened structure which now holds only a portion of the water it once held. What we seek is a facility to provide irrigation water to existing farmlands, not a new development. What we seek is the continuation of crops, livelihoods, and homes for thousands of people who are victims of an untimely chemical reaction in the concrete of the American Falls Dam.

This project has received widespread support from all groups. It has been pointed out here that diverse political factions exist in my

State and your individual States. But, if you will take the time, I will make available to you from the Senate hearings, written testimony on S. 1529 from environmental groups in this State supporting this project. I have in my possession, which I will return to you, the original testimony from the Idaho Fish and Game Department supporting the construction of this dam as soon as possible. Also, from the highway department, the department of water administration, water resource board and the parks and recreation departments of this State.

I submit to you gentlemen that the State of Idaho is indeed together in the need for expeditiously redoing this structure.

I think in summary I would say that I am here today as Governor of the State for thousands of small family farms and family businesses which are dependent upon an adequate water supply for irrigation. On their behalf, I respectfully request that you do in fact give us the necessary relief that we need in order to do it ourselves.

That is the end of the statement. I think I could sum up, Mr. Chairman, by saying, as has been asked in several questions here this morning, yes, there is not a person seated in this room behind me that if they could have it done immediately, would not like to see Uncle Sam come in and pay the bill. But we are practical people out here. We need that dam, and the fastest way to do it is for us to do it ourselves, and we are willing to do it. We just hope to God you give us the capability of doing it.

Mr. Chairman, I will respond to any questions you might have.

Mr. JOHNSON. Thank you, Mr. Governor.

It seems you have lined up everybody in the State of Idaho. You have done your homework well. We hope there is nothing that creeps into this that might disturb your timetable as it has in other types of projects in other States.

We are quite familiar with some of those delays. It hurts us as bad as this one hurts you here.

Your full statement will appear in the record, and your statements from other organizations will also be made a part of the record.

You stated you have to leave. Is there anyone who has to go with you who is a witness?

Mr. ANDRUS. I think Mr. Bob Hogg of the Idaho Power Co. had desired to go so he can make an airline connection. If I would not be presumptuous, I would certainly appreciate him having the opportunity to testify.

Mr. JOHNSON. Well, maybe we had better put him on, since this has run a little longer than we thought it would up to now.

The gentleman from California, Mr. Clausen.

Mr. CLAUSEN. I certainly appreciate your statement.

I just wanted to add in reading the Idaho Fish and Game Department statement on the American Falls replacement signed by Mr. Greenley, October 3, 1973, he does corroborate what you said, the American Falls Dam Reservoir, though initially destroying some fish and wildlife, has resulted in increases in upland game and migratory water fowl in Idaho. It goes on to say, it is our opinion that the wildlife resulting have outweighed its losses.

I think this is a very significant point that I want in the record following your statement.

Mr. ANDRUS. Thank you very much, Mr. Clausen.

Mr. KETCHUM. Mr. Chairman, I would just like to congratulate the Governor on his statement and recall attention to the third paragraph of his statement, which I think is the most powerful statement by any official that I have ever heard before a committee of the Congress or during my days in the California Legislature. Coming as we do from Congress, that is a most refreshing statement, that Idahoans want to to something for themselves rather than depend on the Federal Government to get it done for them. I congratulate you on the statement, and the State of Idaho.

Mr. ANDRUS. Thank you, Mr. Ketchum.

If you will permit me a little bit of levity, if you will just get out of our way and let us do it, we will get it done.

Mr. KETCHUM. Believe me, there are those in Congress who are wholeheartedly in favor of that in the State of California.

Mr. JOHNSON. Mr. Towell.

Mr. TOWELL. One quick question. Of the acreage being irrigated from the American Falls Dam, have you had any water actually cut off in this past year? Did you have a loss of acreage?

Mr. ANDRUS. I could refer that to Ted Diehl and a lot of water managers from irrigation districts here, but I say we got through, to my knowledge, this year all right. We were bothered some and worried at times, but we made it. I asked you to look at the reservoirs that exist today and think about next year.

Mr. TOWELL. I understand that, we have to look ahead. I just want to know what has happened to date.

Mr. ANDRUS. No, we have had a very successful agricultural crop year in the great State of Idaho. The reason we did is because we did have sufficient water to get us by. But that reservoir and others, Arrowrock, Anderson Ranch Dam, and others, don't have any carryover that we would like to see for next year.

Mr. TOWELL. I fully understand the problem you are looking for.

Mr. ANDRUS. A direct answer, Congressman, to your question would be no, we got through this year fine.

Mr. TOWELL. Mr. Chairman, no further questions.

Mr. JOHNSON. Mr. Casey? Mr. Luken?

Thank you, Governor Andrus, for your appearance here.

Mr. ANDRUS. Thank you. The original copies of the attached statements are with Mr. Luken.

Mr. JOHNSON. Yes.

Our next witness, then, will be Mr. Bob Hogg, representative from the Idaho Power Co.

STATEMENT OF ROBERT A. HOGG, PROFESSIONAL CIVIL ENGINEER, IDAHO POWER CO.

Mr. HOGG. Mr. Chairman, I was vice president of the Idaho Power Co., until I retired in 1972. I have a six-page prepared statement along with an atttachment which I would like to appear in the record.

Mr. JOHNSON. Your statement and attachment will appear in the record as presented in full. You may summarize your statement, and we will ask questions.

Mr. HOGG. Thank you, sir, I will be happy to do that.

[Mr. Hogg's prepared statement follows:]

STATEMENT OF IDAHO POWER CO., SUBMITTED BY ROBERT A. HOGG

My name is Robert A. Hogg, Boise, Idaho, a registered Professional Civil Engineer. I was Vice President of Idaho Power Company at the time of my retirement at the end of 1972. Prior to my retirement, it was my responsibility to develop the Idaho Power Company's proposal to assist the American Falls Spaceholders to finance the replacement dam at American Falls. I have been retained in a consulting capacity for the Company in the following through the implementation of the proposal.

American Falls Dam must be replaced at the earliest possible date to insure the safety of the Dam and to restore the reservoir operation to provide the irrigators with the full reservoir capacity of 1,700,000 acre-feet of water.

On January 6, 1973, the Spaceholders adopted a resolution requesting the Idaho Power Company to evaluate the extent to which the Company might be willing to be involved in assisting to finance the American Falls replacement dam. A copy of the proposal submitted to the Executive Committee of the Spaceholders, February 27, 1973, is attached hereto.

While the Company is a spaceholder in the American Falls reservoir, its primary concern in the immediate replacement of American Falls Dam is that the future economic stability of a major segment of Idaho's agriculture and business communities serving this area in southern Idaho is in jeopardy. This area includes some 900,000 acres of land dependent on the American Falls stored water to finish the yearly crops. The crops are severely exposed to reduced production as long as the American Falls storage limitation is in effect.

The Idaho Power Company is a hydroelectric generating system and is keenly aware of factors which affect water conditions, including storage of water. Furthermore, Idaho Power Company's peak load is established by irrigation pumping, which also is dependent upon water conditions. The water conditions have opposite effects on the system, since with low water conditions the generation is low; however, at the same time, the electric load is high because the irrigators use more electricity to lift water from wells and streams to make up the irrigation water deficiency. The American Falls storage limitation is contributing to this adverse effect, because 600,000 acre-feet of reservoir space cannot be used to store either winter or flood flows for later release.

The Company's service area includes most of the 900,000 acres of irrigated land depending on a full capacity of 1,700,000 acre-feet of water in the American Falls Reservoir being available for the final and finishing irrigation. Over 25 percent of the highly productive irrigated land in the Company's service area is exposed to reduced production under adverse water conditions as a result of the storage limitation.

An indication of the seriousness of the change in irrigation water supply as a result of the restriction is illustrated by comparison of the number of years over a 40-year period of study the American Falls reservoir would be emptied at the end of the irrigation season without the limitation and with the limitation. The reservoir would be emptied at the end of the irrigation season about 16 times without the storage limitation. With the storage limitation, the number of years the reservoir would be empty is 26. Since the reservoirs on the Upper Snake are operated on a coordinated basis, the Jackson Lake Reservoir in the Grand Teton National Park would be emptied 4 years out of 40 without the limitation but with the storage limitation on American Falls, operational studies indicate the Jackson Lake would be emptied 9 years out of 40 years.

The degree of economic loss will vary with the severity of water shortage, but there is no question that there will be an adverse economic loss in some amount before the American Falls Dam can be replaced and operated to its full capacity. Water conditions this year, 1973, are poor and some irrigators will experience either reduced production or increased costs this year because of storage reduction.

The Idaho Power Company presently owns and operates a 27,000 KW power plant below the present American Falls Dam. The power plant does not utilize the full head available at the site or all of the irrigation water released. The Company's proposal includes the necessity of building a new power plant under a 50-year FPC license to develop the full energy potential of the site. This, in no way, would affect the water release nor water rights of the irrigators as they now exist.

The present plant produces on the average about 146 million KWH and the new plant is expected to generate on an average 370 million KWH, or about 2½ times as much energy. The installed capacity of the plant will be 100,000 KW, about 3¾ times the present plant.

The Company's proposal to the irrigators is only made possible by the increased energy generation and installed capacity of a new plant built under the 50-year FPC license. The Company is able to utilize the type of power available from this project, and such power is not available from another source at a lower cost; consequently, the resulting high cost is justified.

The Company's interest as a spaceholder is very modest in contrast to the irrigators' interest; however, the Company's 45,000 acre-feet of storage capacity is important in meeting the Company's power supply requirements during the irrigation season.

The Company's proposed plant and use of the Company's storage rights through the Company's downstream plants will generate on the average about 420 million kilowatt-hours per year. This is equivalent to about 210,000 tons of coal per year, or 28 million gallons of oil per year, or 3¾ billion cubic feet of natural gas. The hydroelectric plant will be a source of clean electric energy without some of the environmental problems associated with coal, oil or gas.

The below normal water conditions this year are serving to emphasize the urgent necessity of restoring American Falls to its full operation capability. In the event the 1973–74 winter and spring precipitation is below normal, the 1974 year could be a very poor agricultural production year; this at a time when full food production is urgently needed. In the event the proposed bill, S. 1529, is approved this year, and other necessary approvals are obtained at an early date, the reservoir would be ready for full irrigation use at the beginning of 1976.

In Idaho Power Company's opinion, an early approval of S. 1529:

1. Will minimize the adverse economic effects of the American Falls storage limitation on the economy of southern Idaho because of early completion;
2. Will make significant addition to the energy supply in southern Idaho at a time when energy is critically needed;
3. Will be a significant benefit to the irrigators, since the replacement dam would provide for a continuation of historic water releases and water rights;
4. Will be a benefit to the business community in southern Idaho and the nation's taxpayers, since no money is requested for the dam construction;
5. Will maintain the productivity of irrigated lands served by American Falls for the benefit of the nation's food supplies.

I urge your favorable decision on S. 1529.

PROPOSED AMERICAN FALLS DAM REPLACEMENT PLAN

The American Falls dam was constructed in the mid-1920's and first stored water in the 1926–27 period. The irrigators paid about half of the cost of the dam in cash and the balance has been or is being paid for by the irrigators. The Idaho Power Company acquired 45,000 acre-feet of primary storage and 255,000 acre-feet of secondary storage in the reservoir.

In 1929 a chemical reaction in the concrete of the dam was discovered, which has caused the concrete to swell or expand; however, the strength of the structure has declined at a very slow rate. Recently the strength of the structure has been seriously questioned. The relatively small columns supporting the bearings of the spillway gates are showing advanced effects of the chemical reaction. Reservoir operations are now different than planned in the 1920's by the addition of Palisades (1956), Island Park (1938) and Teton (under construction) and ice loading on the dam is an important consideration now, while it was not considered necessary when American Falls dam was designed. The result of these changes as well as data obtained from core drilling is the imposition of a storage limitation by the Bureau of Reclamation in the interest of safety, which limits the storage to about 1,100,000 acre-feet in the reservoir with a capacity when full of 1,700,000 acre-feet.

The storage limitation is an extreme hazard and exposure to the irrigators since about 900,000 acres of land are dependent on American Falls storage for late season irrigation. Historically, with present storage capacity (including full capacity at American Falls), July and August have been below full require-

ments in 4 years out of 40 years, or on average, 1 year out of 10. With reduced storage capacity this exposure will be increased.

The storage limitation may be corrected by replacing the present dam with a new dam or rehabilitating (repairing) the present dam. The USBR have concluded that the right and proper thing is to replace the dam with a new dam, and have made the following estimated construction cost (July 1972 prices), and have allocated the costs to various functions, as follows:

Construction cost (July 1972)

	In thousands
Dam and reservoir	$22,900
Penstock future power	1,454
Highway improvement	1,861
Remove old dam	2,100
Permanent operating facilities	143
General service equipment	43
Basic health and safety	88
Fishing mitigation	546
Fish and wildlife enhancement	196
Flood forecasting	131
Total	29,463
Interest during construction	2,293
Total	31,761

CONSTRUCTION COST ALLOCATION

(In thousands of dollars)

	Amount	IDC	Total
Irrigation	18,971	1,477	20,448
Flood control	4,348	338	4,686
F. & W. enhancement	1,520	117	1,637
Recreation	1,226	96	1,322
Highway improvement	1,861	145	2,006
Future power	1,454	113	1,567
Basic health and safety	88	7	95
Total	29,468	2,293	31,761

Repayment planned as follows:	*In thousands*
Irrigation by water users	$18,059.0
Fish and wildlife enhancement—non-Federal body	101.5
Power (deferred)	1,543.0
Total reimbursable	20,303.5

The probable schedule which might be followed with USBR construction has been estimated to require 8–10 years before the new dam could be completed. Presumably the storage limitation would prevail during this period; however, it might be relaxed slightly one or two years before completion as the elevation of the new dam was raised during construction.

The Idaho Power Company has several interests in the American Falls dam problem, as follows:

1. As a spaceholder—the Company has primary storage in the amount of 45,000 acre-feet.

2. As owner of a power plant downstream from the dam—the Company owns the 27,000 KW power plant below American Falls and has generation from the water entitlement of both the Company and the USBR. The annual energy potential at American Falls site averages about 370 million KWH's; however, a new power plant is required to generate the potential. The Company's present plant and water entitlement would generate only about 55 million KWH which would not be a feasible operation.

3. As the power supplier to practically the entire area depending on American Falls storage in the full amount for late season irrigation—the Company would be adversely affected in the event a crop failure resulted from the storage limitation in any one or more years in the next 8–10 years. The economic impact of such a crop failure and the possible loss of $100 million of farm income in South Idaho would have widespread effects on the total economy of southern Idaho, not only for the year of the crop failure but several years would be required to overcome the effect of the one year loss.

Time is the essence of the solution of the American Falls dam storage limitation. The Company's interests warrant serious consideration of any plan which would reduce the time the irrigators are exposed to crop failure by the loss of 600,000 acre-feet of storage water in American Falls dam. Minimizing the time required to remove the storage limitation should be the area in which the Company can make substantial contributions because the time to start construction and the construction period should be reduced.

The Company has developed some preliminary information from Bechtel Corporation as a result of a request from the space holders and the American Falls Irrigation District on the manner and time in which the American Falls dam could be replaced or rehabilitated. The estimated cost of a replacement dam and a new power plant is $51,054,000. The cost of the replacement dam is about $20,700,000.

The estimated time schedule developed by Bechtel engineers is the same for either a new dam or rehabilitation of the present dam. The closely coordinated time schedule contemplates that a contractor would be selected and would move on the job no later than about January 1 of the year following execution of a contract, and would be able to complete all preliminary diversion work necessary to begin construction of the new concrete dam section at the end of the irrigation season about October 15 of the same calendar year with the reservoir level about October 15 of the same calendar year with the reservoir level down to elevation 4310 feet (about 150,000 acre-feet). The construction would progress to the point so that the reservoir could begin to fill the following February 1.

The water records indicate that there would be a 30% chance of filling the American Falls reservoir to capacity (1,700,000 acre-feet) after February 1 in the flood period and a 60% chance of filling the reservoir to the storage limitation level (1,100,000 acre-feet). The coordinated operation of upstream reservoirs would have a bearing on refilling American Falls.

Approximately 9 months prior to January 1 are required for studies of feasibility, hydrology, exploration, models, design, plans, environmental impact statements, specifications and contracting. The time required for legislation and various governmental approvals is unknown and could delay the contracting date and the January 1 date for the contractor to move onto the job in which case completion would be set back to the following year. Except for this unknown factor, completion of all technical planning and construction could be accomplished for the reservoir in 24 months and 36 months for the power plant, providing the decision to proceed is made around March 1.

The power production and power costs are important factors in the Company's participation of this project. The power production will assume a plant capacity in the area of 100 MW and energy generation will approximate 370,000,000 KWH in an average year. The power plant might become ready for commercial operation not earlier than January 1, 1976 and more likely in early 1977. Based upon the Company's load projection, this timing would fit the system need for power and would enable purchased power capacity and energy to be reduced from the level heretofore contemplated.

As a measure of how far the Company could go in its financial assistance to the American Falls dam replacement, the costs associated with the Company's portion of the Jim Bridger coal-fired plant have been used. When completed the Jim Bridger plant will be the highest cost plant the Company has constructed; however, a similar plant completed about the same time as a new American Falls plant would be even higher due to estimated cost escalation. Even this higher figure is below the cost the Company would experience if it replaced and financed both the American Falls dam and power plant. Consequently, if Idaho Power Company is to participate, some type of joint venture must be developed.

One possibility is based upon the American Falls Reservoir District assuming the obligations as follows:

1. American Falls Reservoir District would:

(a) Obtain by legislation the right to repair or replace the dam and would have the right to contract for the lease or use of the falling water from the dam for a 50-year period with right of renewal.

(b) Upon acceptance of the completed construction work, would provide for continued coordinated operation and maintenance of the dam and reservoir (excluding power facilities) for the mutual benefit of the parties, providing that irrigation rights shall always have priority in the operation hereof, subject to the rights of the Company as a spaceholder.

(c) If it is determined that a roadway is to be constructed on the dam, it shall be the responsibility of the District to obtain payment of the costs necessitated thereby.

2. American Falls Reservoir District would agree with Idaho Power Company:

(a) To finance construction of either the new dam or replacement dam by the sale of tax-free bonds.

(b) To assist the Company in obtaining a 50-year FPC license for the Company to build, own, operate and maintain a power plant to utilize the water release from the dam. Upon issuance of said license, Idaho Power Company would execute an agreement with the District to pay to the District an amount of money equal to the annual requirements for interest and amortization of the District's bonds over a 40-year period. Such amount shall be equal to actual construction cost of the dam, but shall not exceed $19,000,000 plus interest. The initial term of the agreement in consideration of the aforesaid payment shall be 50 years. The Company would have the right to renew the agreement without further payment other than operation and maintenance cost of specific power facilities upon extension of the FPC license beyond the initial 50-year period.

(c) To save the Company from additional dam costs over $10,000,000 for the road, recreation, fish, wildlife, health or safety facilities. The cost of any such facilities shall be at the expense of the District.

(d) To have Company act as District's sole agent in the engineering, purchasing and construction of the dam, in the interest of obtaining the lowest construction cost for the total project. Such engineering and construction shall be in accordance with modern and safe engineering standards as determined by an independent engineering board of three consultants mutually selected by the parties.

The above arrangement will result in the Company's cost being just barely under the cost of similar power from a coal fired plant costing somewhat more than the Jim Bridger plant. This plan does not provide for any environmental costs.

To give you an idea of the cost of this power in meaningful terms without a lot of details, the likely cost of a coal fired plant in 1976–77 may approximate 17.1 mills per KWH, and the cost of power from American Falls project on the above proposal, based on preliminary estimates, is 16.1 mills per KWH. These numbers compare with residential customers' power cost as of today of about 17.1 mills per KWH and irrigation power of about 10.0 mills per KWH. The power costs reflected here are associated with peaking type of power, which the American Falls plant might supply within limitations of irrigation releases and winter storage requirements; however, the need may develop for a reregulating dam downstream from the power plant to utilize the peaking ability.

This proposal is in broad terms and many details must be developed, but with the cooperative participation of all parties, the exposure of southern Idaho to a severe economic crisis can be minimized.

Mr. Hogg. I would like the committee to understand how the Idaho Power Co. got into this. The company has been very active since its conception in 1960, and because we have built 15 dams and powerplants downstream from American Falls I assume the irrigators thought we might be the ones to go to see if we had any interest in assisting with building the plant.

As Senator McClure and Senator Church have indicated this year is the one year which really demonstrates the importance of restoring this reservoir to full capacity as soon as possible. The reservoir storage upstream at American Falls is 3,900,000 acre-feet. Senator Church, I believe it was, or Senator McClure indicated our hold-over reservoir storage is about 1,350,000 less than it was a year ago. It was because we had hold over storage from better water years this past summer that we were able to have a very successful crop this year.

Another point I would like to mention is the inter-relationship and the timing of the project and its design and cost. There is one time during the year when this particular design of dam, along with its costs can be done. We have a very close schedule upon which to go now in order to start this bridge construction in December and also to start the dam construction a year from January 1.

I might add that, Mr. Chairman, at the moment we are impinging on that time schedule. The engineer told me this morning that we should have ordered the water wheels for our powerplant 6 weeks ago, but we have not done it yet. So time is of the essence.

My prepared statement indicates what the powerplant will contribute in terms of energy. It will also indicate how many tons of coal and oil and so forth will be saved. I will not go into that detail. I think, Mr. Chairman, time will be saved if I can submit myself for any questions anybody has.

Mr. Johnson. As I understand it, your company anticipates building a new powerplant and taking water through the dam by your Penstock thus utilizing the head on the reservoir as well as the additional amounts of water that will flow through the reservoir?

Mr. Hogg. That is correct. We will install special water turbines to give effect to the varying heads that occur on an irrigation dam.

Mr. Johnson. You quote a figure of $19 million that you are willing to participate up to. Due to today's costs and inflation, what is your breaking point, what can you afford to pay for power?

Mr. Hogg. That is the top level. When we developed that figure we anticipated a certain amount of inflation. We hope it is within the ball park.

Mr. Clausen. Will the gentleman yield?

Mr. Johnson. Yes.

Mr. Clausen. What is the percentage of inflation that you have allowed for in that figure?

Mr. Hogg. About 6 percent.

Mr. Clausen. Per annum?

Mr. Hogg. Per year, yes, sir.

Mr. Johnson. Now, what effect did this have on your other facilities which are downstream?

Mr. Hogg. The storage, of course, the water going through American Falls Dam, of course, is first used for irrigation service. We have a right to utilize only 45,000 acre-feet upon our demand. So the only control we have is on its use in the downstream powerplant.

The reservoir, however, does save some flood water. It is diverted out and used for irrigation and the excesss water percolates underground and returns downstream at Thousand Streams, for example. This is beneficial to our downstream powerplant.

Mr. Johnson. Then there are benefits that will accrue to the Idaho Power Co. in the downstream facilities.

Mr. Hogg. Yes, sir. The amount of that is also indicated in my testimony.

Mr. Johnson. The gentleman from California, Mr. Clausen.

Mr. Clausen. I have no questions.

Mr. Johnson. The gentleman from Nevada, Mr. Towell.

Mr. Towell. No further questions, Mr. Chairman.

Mr. Johnson. Mr. Casey, do you have a question of the witness?

Mr. CASEY. No, sir. I have read his statement and I don't have any questions.

Mr. JOHNSON. The gentleman from the minority, Mr. Luken. Do you have any questions?

Mr. LUKEN. No, thank you, Mr. Chairman.

Mr. JOHNSON. Actually you people will be present when the hearings are held before the full subcommittee. At that time we can get into other questions. I know you are pressed for time and you do want to accompany the Governor back to wherever he is going today.

Mr. Ketchum, any questions?

Mr. KETCHUM. No questions.

Mr. JOHNSON. We thank you for coming here. We have your statement. We had it previously. We have looked it over. There are some other questions we want to get into when the hearings are held in Washington. This relates to the Bureau of Reclamation and the Department of the Interior's testimony, and that of your company and the Idaho spaceholders.

We will take a 5-minute break and come back and start with the State legislators who are the next witnesses, and then get into all of them before we close.

[Short recess.]

Mr. JOHNSON. Our next witness as we resume our hearing will be Mr. John M. Barker, the State senator, president of the American Falls Reservoir District.

Mr. Barker.

STATEMENT OF JOHN M. BARKER, PRESIDENT, AMERICAN FALLS RESERVOIR DISTRICT

Mr. BARKER. Mr. Chairman, members of the committee, distinguished guests, ladies and gentlemen. I have prepared detailed remarks but will paraphrase them in the interest of time.

My name is John M. Barker. I operate an insurance agency in Buhl, Idaho. I am a farm owner and manager in Twin Falls County, Idaho. I have served as a director of the American Falls Reservoir District for 16 years, and for the past 6 years have served as president of the board. Since 1967 I have served as the chairman of that board. I have also served in the Idaho Legislature as a senator from Twin Falls County.

It is a great pleasure for me to represent the American Falls Reservoir District.

Our district was formed in 1923 when it became the consensus that the original American Falls Dam should be constructed. Because of the then unavailability of Federal moneys, our district bonded themselves for $2.7 million in general obligation bonds at 6 percent interest. The bond election was approved by a vote of 6 to 1. The lands in the American Falls Reservoir District were pledged to repayment of the then obligation. This money was used in the construction of the dam. The district now owns approximately 400,000 acre-feet of storage space in the reservoir, when the reservoir is operated at a full capacity of 1.7 million. Our district encompasses approximately 450,000 acres of land and represents five irrigation operating companies. They are the Twin Falls Canal Co., the North Side Canal Co., the Aberdeen-Springfield Canal Co., the Martin Canal Co., and the Woodville Canal Co. Some of these companies own additional American Falls storage in their own name. Since retirement of the American Falls bonds, the district has merely operated as an agency for the collection of annual O. & M. charges for the operation of American Falls. Since 1964, the date of the bureau's first engineering pronouncements concerning the alkali condition at American Falls Dam, American Falls spaceholders have been concerned about the situation.

The restriction order of October 1972, was termed an emergency by the spaceholders. The loss of one-third of American Falls storage capacity brought all of the spaceholders together on a common ground to determine the best basis to remedy the situation. An informal association of American Falls spaceholders was formed. An executive committee was selected and empowered to evaluate all of the alternatives toward the earliest possible replacement of American Falls. The American Falls spaceholders, throughout the district, approached the Idaho Power Co. on the possibility of working out a sale for falling water if a private reconstruction could be accomplished. In March 1973, the spaceholders endorsed the concept of private financing for the replacement. The American Falls Reservoir District, has consented to act as a "constructing agency" as defined in S. 1529 because of the number of acres and the value of their lands which would be pledged as security for eventual bond payments.

Thereafter, the spaceholders worked in close conjunction with the Idaho congressional delegation and were successful in the introduction of bills on both the Senate and the House side. S. 1529, as passed by the Senate, is the concept which the spaceholders endorse for the replacement of the dam. The agreement of the spaceholders is that any replacement would be operated in an identical fashion as the existing American Falls Reservoir and that each existing spaceholder would be entitled to enter contracts for the repayment of their proportionate share of the cost of the replacement structure. Economic ramifications make the early replacement of American Falls Dam an urgent matter. Our congressional delegation, our Governor, our legislature and the American Falls spaceholders have joined in a unified effort to replace the dam. Because of the offer of the Idaho Power Co., and if the dam is constructed with power facilities, the spaceholders will be liable to repay only those amounts over and above the payments by the Idaho Power Co. for the falling water.

The spaceholders have now contracted with Bechtel, Inc., of San Francisco, to begin engineering work toward the end of final plans and designs for the replacement dam. The spaceholders coordinated in selecting a consulting board to review the preliminary concepts of Bechtel. The consulting board endorsed the Bechtel approach. With the passage of S. 1529, it would be the hope of the spaceholders that the Idaho Power Co. would be successful in obtaining a Federal Power Commission license, so that construction could proceed simultaneously on the dam and powerhouse, and that a saving would result by utilizing the same contractor. The Idaho Power Co. would then agree to pay $19 million, plus tax exempt interest, over a period of 40 years. During the same period, the American Falls Reservoir District would collect from all other spaceholders who contract for storage water in

the reservoir, enough money to make the annual bond payments, plus interest.

The reservoir would be operated in the same manner in which it is now operated, observing the preference for irrigation. The spaceholders are agreed to work out arrangements as to a highway crossing and any mitigation of fish, wildlife, and environmental matters.

If S. 1529 becomes law, we would proceed to negotiate a contract with the Secretary of Interior for his ownership of the structure after completion, and the continued operation and maintenance of the dam and reservoir by the Bureau of Reclamation.

It is presently the plan to construct a two-lane highway on top of the dam, which, coupled with the two-lane bridge to be constructed below the dam by the Idaho State Department of Highways, would provide an adequate four-lane crossing. A memorandum of understanding now exists between the Idaho State Department of Highways and the American Falls Reservoir District concerning their mutual obligations.

Following the enactment of S. 1529, our bonding counsel has advised us that it will be necessary to secure additional amendments to the Idaho Irrigation District Code. Because of the statewide impact of the American Falls replacement problem, we anticipate a favorable response from the legislature. Thereafter, the American Falls Reservoir District would plan a bond election and, together with the Bureau of Reclamation, would propose and execute contracts with all existing spaceholders for their proportionate share of the space.

We are advised that it is not timely to file with the Internal Revenue Service for a tax-exempt ruling until such time as the congressional bill has passed, the State legislation obtained, and the contracts are in a form which might be presented to the Internal Revenue Service. We are encouraged at the possibility of obtaining tax-exempt interest for our bonds. In talking with financial agents, we are also encouraged at the possibility of some competitive bidding for those bonds.

There is one amendment which the spaceholders must request from the committee concerning the qualifying of American Falls Reservoir District as the "constructing agency" for the purposes of qualifying us to receive Federal funds for construction of a highway on the dam.

On behalf of the American Falls board of directors, I would like to thank the chairman and the members of the committee for affording us this hearing. We hope that you will enjoy your visit in Idaho, and will recommend S. 1529 for passage upon your return.

Our congressional delegation was receptive to proposals set out in Senate bill 1529; 96 percent of the spaceholders in American Falls are also in accord. The proposal of Senate bill 1529 is not unlike the situation that occurred in 1923 when the American Falls Reservoir District was formed. At that point Federal funds were not available for a much needed dam at American Falls and the 400,000 acres in the American Falls Reservoir District funded themselves for $2.7 million at 6 percent interest by a vote of 6 to 1 majority.

I call attention in my written testimony on page 3 next to the last paragraph concerning amendment to the bill concerning construction of a highway on the dam of Federal funds.

I want to thank you for the opportunity to appear here today. We are grateful to this committee for scheduling this field hearing to investigate the American Falls Dam matter.

We urge your continuing consideration of Senate bill S. 1529.

Mr. JOHNSON. We thank you for your summary.

I might say as far as the highway relocation, I think Congress is very receptive to that proposal. We don't have so much trouble building bridges as we do dams.

The gentleman from California, Mr. Ketchum.

Mr. KETCHUM. No questions.

Mr. JOHNSON. The gentleman from Nevada, Mr. Towell.

Mr. TOWELL. No questions, Mr. Chairman.

Mr. JOHNSON. Mr. Casey?

Mr. CASEY. No.

Mr. JOHNSON. Mr. Clausen is not here.

We want to thank you for coming here. You have certainly had long experience with this, you have been a legislator, businessman, farmer, and member of the organization that represents one of the spaceholders. This is the kind of testimony we like to get from local interests.

Mr. BARKER. Thank you.

Mr. JOHNSON. The next witness will be Mr. Bob Saxvik, State senator.

STATEMENT OF HON. ROBERT W. SAXVIK, STATE SENATOR FROM THE STATE OF IDAHO

Senator SAXVIK. Chairman Johnson, members of the committee, as a member of the Idaho Senate and a member of its Agricultural Affairs Committee and representing a constituency that is greatly affected by the sustaining water supply of American Falls, I feel it is of great importance to testify before you today.

I feel dwarfed a bit because of the great wealth of the witnesses that have appeared so far and will appear later. There is a great wealth of witnesses here today that have great expertise on water needs, contractual arrangements, power requirements, and historic background. But in my function I deal with somewhat of a cross-section of the people in my district. I am as interested in how it affects that woman working on the food processing line and her economic outlook and her economic well-being and security as the farmer who grows the product. I think they are all of equal importance. In other words, what I am talking about is the overall economic picture.

The failure to replace American Falls Dam in the near future could bode for an economic hardship that would perpetrate a "domino effect" on the entire area. The loss of water output as we have known in the past years will not only affect those farmers who are first—the raw producer—but it extends on to the processing plant—to the implement dealer—to the process worker—to the retailer in downtown areas—right on to the man on the street.

In other words, it will not only affect those farmers who are the No. 1 raw product producer, but it extends right on to the production, the banker, the process worker, and the retailer.

For those Congressmen not familiar with southern Idaho's economy, a decreasing percentage of our raw agricultural products are shipped out of the area. Since the mid-fifties, the Burley-Rupert area has had a tremendous growth in agricultural food processing, especially in potatoes. Add to that, the third largest sugar beet processing plant, a malt barley processing plant and a corn and pea canning plant plus all the other related service industries and you start to get a clear picture of our overall economic dependence on agriculture. For example, that same processing growth has converted Burley from the rather stable and staid community of 5,000 in the early fifties to a busy, ever-growing community of nearly 10,000 people, providing jobs for thousands of people and created a greater tax base that has the spinoff effect of new hospitals, schools, new recreation facilities, new construction in housing, added retail businesses, and increased demand for professional service.

This brings us to the old adage, "Which came first, the chicken or the egg?" In the case of American Falls Dam, the lines are clear—the water supply comes first, with the farmers' ability to produce, then the finished products—now much needed in tenuous world food supply.

It has been gratifying to see the cooperation between the many parties in seeing this project through. Governor Andrus, the Bureau of Reclamation, the Idaho Power Co., our congressional delegation, the Idaho Legislature, irrigation districts and many others.

With respect to the legislature, I along with Senator Barker, have always mentioned the fact we stand ready to serve and implement those needed pieces of State legislation and will support such.

I speak for the people of all walks of my legislative district 26. In ending my statement I would ask on their behalf for your support in seeing the enabling legislation passed.

Thank you very much.

Mr. JOHNSON. We thank you for your complete statement. If anything is left out it will be made a part of the record. We appreciate your summary. You should have been a prime witness before the Water Resources Council when they held their hearings on criteria and administrative practices. We tried to sell regional benefits, but the task force finding was set aside. Instead, we came out with a criteria we don't like. We think there is more to it than meets the eye. You have just brought to light here in your testimony, the things that are happening locally, the benefits that should be considered that will not be considered.

Senator SAXBE. I can add to that, Mr. Chairman. There is often the bone of contention among business people and farmers that should never exist, especially in regions such as this.

Mr. JOHNSON. I am sure that farmers agree with us that there should be taken into consideration, all regional benefits as well as direct national benefits.

The gentleman from California, Mr. Ketchum.

Mr. KETCHUM. No questions, Mr. Chairman.

Mr. JOHNSON. The gentleman from Nevada.

Mr. TOWELL. No questions.

Mr. JOHNSON. Mr. Casey.

Mr. CASEY. No.

Mr. LUKEN. No.

Mr. JOHNSON. Our next witness will be Mr. Ralph Wheeler, State representative, member, city of American Falls Bridge Committee.

STATEMENT OF HON. RALPH WHEELER, STATE REPRESENTATIVE FROM DISTRICT 35, STATE OF IDAHO

Mr. WHEELER. Mr. Chairman and members of the committee, welcome to Idaho. I appreciate your efforts to come out here to get the grassroot feelings. I appreciate the opportunity of being able to testify before you today.

I have been a city councilman and mayor of American Falls for the past 15 years and as of the first of this year, a State representative from district 35, which includes the site of the American Falls Dam.

The residents of my legislative district have long noted the steady deterioration of the dam as well as the increasing inadequacy of the highway atop the structure. Until recently, their complaints have fallen on deaf ears.

The decreased storage behind the dam and the restrictions to one-way traffic on the highway have shown that the problem is at long last receiving the attention it deserves.

First, I would like to discuss the impact of the traffic restrictions. As the only crossing of the Snake River in an 80-mile reach, the American Falls Dam supports the road over which not only all the marketable farm produce from some 90,000 acres must travel, but also the route over which all the fuel, food, machinery, fertilizer, and other necessities of the agricultural community must pass. It also provides access to the closest hospital and medical care for some 5,000 people.

The road on the dam also serves a major potato processor for the potatoes, the 850 employees at the plant, and the market route for the finished product.

Most, but not all of the water users, are not residents of my legislative district. But I, like you gentlemen, cannot be narrowminded in my representation, I must be concerned about the well-being of the Magic Valley area and the State of Idaho as well.

As you have heard, the water stored behind the dam provides the life or death fate for nearly 900,000 acres which provides nearly 25 percent of the income for Idaho's largest industry—agriculture.

I am sure you are all aware of the vast amounts of borrowed capital that are necessary to operate today's farming operations. The 34-percent reduction in water storage could very easily result in near or complete crop failure, bankruptcy for many farmers and a domino effect carried through to food processors, suppliers and retailers touching the lives of tens, if not hundreds, of thousands of Idaho residents.

Should such a disaster occur, I would actually fear for the solvency of the State of Idaho itself. I don't think I am exaggerating in that fear.

The reservoir impounded behind the American Falls Dam is emerging as a major summer water-sport recreation area. The city of American Falls has had under planning for 3½ years now and has received

Exhibit Z

WATER DISTRIBUTION

AND HYDROMETRIC WORK

DISTRICT NO. 36

SNAKE RIVER, IDAHO

1969

STORED WATER DELIVERIES

Reservoir Allotments

All reservoirs except Palisades filled and allotments were made as follows:

American Falls	1,700,000 acre-feet
Jackson Lake	847,000 acre-feet
Palisades (77%)	924,000 acre-feet

1969 Storage Allotments in Acre-feet
(Downstream order from Heise)

Canal	American Falls	Jackson Lake	Palisades	Total
Poplar Irrigation Dist.	673	1,589	1,194	3,456
Progressive Irr. Dist.	12,485	7,209	21,945	41,639
Farmers Friend		2,000	7,238	9,238
Enterprise Canal Co.	8,923	11,252	15,092	35,267
Mattson Craig			1,110	1,110
Butler Island			193	193
Harrison	12,025	11,943	18,095	42,063
Rudy	2,649	3,530	12,089	18,268
Burgess	9,496	10,603	24,178	44,277
Clark & Edwards			616	616
Lowder		1,040	1,232	2,272
East Labelle			616	616
Sunnydell		4,000	4,851	8,851
Lenroot	3,868	5,234	6,045	15,147
Reid	2,549	1,472	2,426	6,447
Texas and Liberty Park			3,619	3,619
Enterprise Irr.Dist. N. F.	10,188	5,883		16,071
Freemont-Madison Dist. N. F.			770	770
Rigby			4,851	4,851
Island			3,619	3,619
Dilts	886	511	924	2,321
West Labelle			770	770
Long Island			3,850	3,850
Parks & Lewisville			4,235	4,235
North Rigby			924	924
Butte & Market Lake	4,666	2,695	33,880	41,241
Osgood (U.I.S. Co.)	13,459	7,771	11,742	32,972
Bear Island	191	110		301
Sakaguchi (Smith & Kennedy)	71	41		112
Clement Bros. (Kennedy)		155		155
Owners Mutual		200	223	423
Shattuck Irrigation			3,003	3,003

1969 Storage Allotments - continued

Canal	American Falls	Jackson Lake	Palisades	Total
Idaho	22,911	13,230	45,276	81,417
Martin	2,096	2,659	4,312	8,977
New Sweden Irr. Dist.	25,731	19,857	24,178	69,766
West Side Mutual		1,810	1,810	1,810
Woodville	6,047	3,491	4,620	14,158
Snake River Valley	26,367	30,225	27,181	83,773
Palisades Waterusers			38,677	38,677
Blackfoot	12,763	7,370	3,118	23,251
New Lava Side			9,048	9,048
Peoples	21,415	20,365	26,950	68,730
Aberdeen	55,951	74,626	117,656	248,233
Corbett	3,396	1,961	4,851	10,208
Riverside			1,155	1,155
Danskin			1,810	1,810
Trego	1,314	758	2,464	4,536
Wearyrick			462	462
Watson			1,810	1,810
Parsons			539	539
Total above Blackfoot	259,670	251,780	505,247	1,017,057
Fort Hall Michaud	47,700		64,603	112,303
Falls Irrig. Dist.	23,300		31,493	54,793
Minidoka Irrig. Dist.	83,563	186,030	26,950	296,543
Burley Irrig. Dist.	157,942		30,184	188,126
A&B Irrig. Dist.	47,593		69,913	117,506
Milner Low Lift	45,687		34,263	79,950
Twin Falls Canal Co.	151,185	97,183		248,368
Hillsdale	41,146			41,146
North Side Canal Co.	397,214	312,007	89,782	799,003
Gooding	400,000		770	400,770
Idaho Power Co.	45,000			45,000
City of Pocatello			38,500	38,500
Westvaco			3,850	3,850
J. R. Simplot			1,925	1,925
*U.S.			26,520	26,520
Total below Blackfoot	1,440,330	595,220	418,753	2,454,303
Grand Total	1,700,000	847,000	924,000	3,471,000

*Wyoming 25,410 a.f.; contingencies 1,110 a.f.

The storage rental committee, consisting of H. R. Gray, Leonard Graham, H. C. Eagle and Art Larson supervised water rentals.

The location of holdovers in the various reservoirs was computed as shown in the following table. These may be changed if desired by any canal prior to the 1970 irrigation season.

2009 WATER DISTRICT 1 RESERVOIR SPACE BY USER ASSUMING FULL RESERVOIRS (ACRE-FEET)

NUMBER	USER	JACKSN	PALSDS	PL USR	PL WWS	HNRY L	ISL PK	GRSY L	RIRIE AM	WWS AM	FLS L	WLCTRN LTP	PL PWR	RENTAL	TOTAL
		MISCELLANEOUS													
99999100	POCATELLO CITY	0	39631	0	0	0	0	0	0	0	0	10369	0	0	50000.0
99999150	FMC CORP	0	5000	0	0	0	0	0	0	0	0	0	0	0	5000.0
99999200	FRE-MAD SNAKE	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0
99999250	WYOMING COMPCT	0	33000	0	0	0	0	0	0	0	0	0	0	0	33000.0
99999300	PALISADES USRS	0	0	15497	560	0	0	0	0	0	0	0	0	0	16057.4
99999350	IDAHO POWER CO	0	0	0	0	0	0	0	0	0	44275	0	0	0	44275.0
99999400	BUREAU OF REC	3923	10022	0	0	0	0	0	0	0	8950	0	0	157000	179895.0
99999410	ARTESIAN IRR	0	0	60	0	0	0	0	0	0	2794	0	0	0	2854.0
99999500	SNAKE UNALC BK	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0
99999525	FREE-MAD TRANS	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0
99999550	FRE-MAD MISC	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0
99999600	F-M UNALLCATED	0	0	0	0	0	20447	0	0	0	0	2932	0	0	23379.3
99999700	MITIGATION INC	0	16360	0	2620	0	0	0	80500	0	0	0	0	0	99480.0
99999725	GROUND WTR EX	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0
99999950	MILNER	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0
99999990	OTHER	0	0	0	0	0	0	0	0	0	0	0	0	0	0.0
	TOTAL	3923	104013	15557	3180	0	20447	0	80500	0	56019	13301	157000	0	453940.7

Preliminary

93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 93-701

AUTHORIZING THE SECRETARY OF THE INTERIOR TO ENTER INTO AGREEMENTS WITH NON-FEDERAL AGENCIES FOR THE REPLACEMENT OF THE EXISTING AMERICAN FALLS DAM, MINIDOKA PROJECT, IDAHO, AND FOR OTHER PURPOSES

DECEMBER 6, 1973.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HALEY, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 1529]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 1529) to authorize the Secretary of the Interior to enter into agreements with non-Federal agencies for the replacement of the existing American Falls Dam, Minidoka project, Idaho, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 9, after "dam" insert "and related facilities".

Page 2, line 9, beginning with the word "project" strike the remainder of line 9 through line 15 and insert:

> project. The construction and operation of the replacement dam shall not result in an increase in the elevation of the reservoir water surface above that maintained for the original dam, and provision shall be made for the correction and prevention of erosion related to the reservoir or for the full and adequate compensation of adjacent land owners (including owners of land subject to a flowage easement for the reservoir) if such erosion cannot be corrected or prevented.

Page 3, line 3, beginning with the word "private" strike the remainder of line 3 through line 8 and insert:

> constructing agency funds, or any combination thereof as the parties deem appropriate; and (ii) design and construct an additional two lanes on top of the replacement dam, which additional two lanes may be funded with State, Federal or constructing agency funds, or any combination thereof. For

the purpose of subpart (ii) of this subsection, the constructing agency shall be considered an 'agency' within the meaning of 23 U.S.C. 320(a).

Page 3, line 25, beginning with the word "Dam:" strike the remainder of Section 3 ending on Page 4, line 4, and insert in lieu thereof the word "Dam."

Page 4, line 17 through line 20, strike the proviso and insert in lieu thereof:

Provided, That said contract for falling water shall be approved by the Secretary and shall not impair the efficiency of the project to serve the other purposes of the Minidoka project.

Page 4, beginning on line 21, strike out all of the present Section 5 ending on Page 5, line 18 and insert in lieu thereof:

SEC. 5. Construction of the replacement dam shall not be initiated until the Secretary has approved the designs and specifications of the dam and the plan of construction of the dam and of the proposed operation of the dam and reservoir. Construction of each related facility shall not be initiated until the Secretary has approved the designs and specifications thereof. Costs incurred by the Secretary in reviewing such designs, specifications, plans and construction shall be included as project costs allocated to beneficiaries of the replacement dam and shall be reimbursable to the Secretary.

H.R. 6781 (Mr. Hansen of Idaho and Mr. Symms) and H.R. 6782 (Mr. Hansen of Idaho and Mr. Symms), related bills, were also considered by the Committee.

PURPOSE OF THE LEGISLATION

The purpose of S. 1529 is to authorize the Secretary of the Interior to enter into an agreement with an appropriate non-Federal public entity under the terms of which the present spaceholders in American Falls Reservoir would arrange financing and construction of a replacement dam at the site of the existing American Falls Dam on the Snake River in Idaho. The replacement dam would be conveyed to the Secretary of the Interior and would be operated as a feature of the Minidoka Project, Idaho.

BACKGROUND

The existing American Falls Dam was constructed by the Bureau of Reclamation in 1927 as a feature of the Minidoka Project. It is a structure of composite design, the center consisting of a concrete gravity section and the embankment wings being of earthen construction. The dam has an overall height of 94 feet and a crest length of 5,227 feet. The American Falls Reservoir has an active storage capacity of 1,790,000 acre-feet, a surface area at maximum storage capacity of 56,000 acres and a shoreline of approximately 100 miles. The reservoir furnishes a full or partial water supply for about 000,000 acres of land in the Snake River Valley producing a gross crop value of $150,000,000 in the 1971 crop year.

An alkali-aggregate reaction in the concrete was noted in the concrete sections of the dam a number of years ago. This reaction has resulted in gradual but progressive deterioration in the structural qualities of the concrete—to the point that the competence of the dam is now threatened.

It has been necessary to impose storage limitations on the reservoir and limit the use of the upper eleven feet of capacity. This limitation reduces the effective capacity of the reservoir to approximately 65 percent of the design amount. Additional and more severe limitations can be expected as the condition of the concrete worsens.

Although the Bureau of Reclamation has been aware of the condition of the dam for a decade or more, no recommendations have been made to the Congress for authorization to repair or replace the dam. In view of this fact, the Idaho Congressional delegation, acting for the spaceholders in American Falls Reservoir, introduced legislation to permit the early replacement of the structure—largely at non-Federal expense—without waiting any longer for the Federal government to act.

JUSTIFICATION FOR LEGISLATION

American Falls Dam and Reservoir is the principal storage facility for irrigation water in the upper Snake River system. Operated in coordination with other storage reservoirs, it furnishes a regulated supply of irrigation water to about 900,000 acres of highly productive farm land. The agricultural production from this land represents the economic cornerstone of southern Idaho. Curtailment of storage in American Falls—to the degree now determined necessary by the Bureau of Reclamation—poses the distinct threat of curtailed production, approaching crop failure, depending on the water right priorities of the several spaceholders.

Replacement of the structure has been determined to be preferred to repair and is highly urgent. Irrigation water supplies were adequate for the 1973 crop year only by drawing storage levels in the system to an all time low. A season of curtailed runoff from Snake River and its tributaries would be of disastrous consequences on crop production.

Realization of this fact has motivated the plan of financing and construction through non-Federal initiative. The constructing agency has developed a carefully sequenced plan of operation that is keyed to final enactment of S. 1529 during 1973. This timetable is essential to enable other actions to be accomplished without delaying the in-service date of the replacement facility by a full year.

The Committee believes that the local people should be commended for their initiative and willingness to forge ahead in an area where the Federal agencies appear to have become incapable of progress in a reasonable time frame.

A draft Environmental Impact Statement dated May 1973 was made available to the Committee as part of the Interior Department's report on S. 1529. The draft statement indicates that the requirements of the National Environmental Policy Act has been very well taken into account by the Department of the Interior. The statement notes affirmative as well as minor adverse effects. The major adverse effect is on the quality of the trout fishery immediately downstream from the reconstructed dam. Testimony of State and local fish and wildlife

interests, before the Committee, is to the effect that means and measures will be found to mitigate these damages and the constructing agency is committed to finding an acceptable solution. There are no other noticeable adverse effects since the new dam will occupy the site of the old dam and the reservoir will occupy the same area. The present structure is a hazard to life and property and is somewhat of an eyesore. The reconstructed dam will abate these problems. There will also be enhanced public use recreational facilities and wildlife propagation facilities.

As an added safeguard, the Committee understands that the filing of the final Environmental Impact Statement with the Council on Environmental Quality will be a prerequisite to any action to implement the authority contained in S. 1529 to execute an agreement between the spaceholders and the Secretary of the Interior.

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

Section 1.—This section authorizes the Secretary of the Interior to enter into an agreement with the American Falls Reservoir District through which the District may finance and construct a replacement dam for the existing American Falls Dam.

The section also requires that the United States take title to the structure—that it be a "government dam" within the meaning of the Federal Power Act—that it be operated by the United States as a feature of the Minidoka project and that the reservoir shall not have a higher water surface elevation than the existing reservoir.

The section also provides that operation of the replacement facility include provision for prevention and correction of reservoir bank erosion or for adequate compensation to adjacent landowners if erosion prevention or correction cannot be achieved.

Section 2.—This section provides that the replacement dam will not alter the present rights of existing spaceholders. It also provides that there shall be included, as a part of the project, a river crossing meeting the then current Department of Transportation Standards for Secondary Highways to replace the inadequate and unsafe highway crossing on top of the existing dam. This will be accomplished by the construction of a two-lane highway bridge immediately downstream from the existing American Falls Dam, utilizing non-Federal financing. This structure is under construction and will serve as a river crossing facility during the time that American Falls Dam is being replaced. This section further contemplates that two additional traffic lanes will be provided on top of the replacement dam thus affording, in effect, a 4-lane highway crossing. State highway and Federal highway aid funds will be utilized in financing the crossing in accordance with existing Federal Highway legislation. This section also provides that the constructing agency will be considered an "agency" within the meaning of 23 U.S.C. 320(a).

Section 3.—This section provides for the constructing agency to contract with spaceholders in the existing reservoir for repayment of costs incurred by the constructing agency in replacing the dam. It further provides that such contracts be a condition of delivery of water from the replacement facility. This section also requires that the Secretary of the Interior be a party to such contracts and that

they be consistent with contracts covering repayment of the costs of the existing dam.

Section 4.—This section authorizes the constructing agency to enter into a falling-water contract with the Idaho Power Company, providing a source of income to the constructing agency to assist in defraying the costs of the replacement dam. The contract with the Power Company is subject to approval by the Secretary of the Interior—to assure that operations under the contract do not impair the efficiency of American Falls Dam and Reservoir to serve the authorized purposes of the Minidoka project.

Section 5.—This section requires that construction not be initiated until the Secretary of the Interior has approved the designs and specifications for the dam as well as the plan of construction and operation of the replacement facility. Construction of each separate related facility is also subject to approval of its designs and specifications by the Secretary.

It is the express intention of the Committee, in adopting this section, that the start of construction of the dam is to be contingent on approval of the dam and its component parts, as distinct from fish and wildlife and recreation facilities, highway connections and other facilities unrelated to the primary function of impounding and releasing water.

Costs incurred by the Secretary in reviewing such designs and plans will be reimbured by the construction agency.

Section 6.—This section authorizes the Secretary of the Interior to provide facilities for recreation and fish and wildlife enhancement in accordance with the cost-sharing provisions of the Federal Water Project Recreation Act—and to provide specific facilities for public recreation in accordance with the Land and Water Conservation Fund Act of 1965.

Section 7.—This section authorizes appropriations in the amount of $400,000 with which to construct the fish and wildlife and recreation facilities authorized by Section 6.

The section also authorizes to be appropriated an amount equal to the proportionate share of the construction cost assignable to the irrigation storage rights of the Michaud Division of the Fort Hall Indian Reservation. This amount is 2.8 percent of the cost of the project which, at current estimates, is about $750,000.

COMMITTEE AMENDMENTS

The Committee on Interior and Insular Affairs adopted six amendments to S. 1529. The effect of each amendment is set forth below:

1. An amendment to Section 1 was adopted at the suggestion of the Department of the Interior, to more precisely limit the water surface elevation of the reservoir formed by the replacement dam—to the elevation of the existing reservoir and to require that operation of the replacement reservoir shall either prevent shoreline erosion, correct such erosion if it occurs, or compensate adequately the owners of adjacent lands if shoreline erosion cannot be prevented or corrected.

2. An amendment to Section 2 was adopted at the suggestion of the constructing agency, to reflect agreement reached among the space-

holders, the Idaho State Highway Department and the Department of Transportation concerning the design, construction and financial responsibility for the new highway crossing of the Snake River. It also assures that the constructing agency will be considered an agency within the meaning of the statutes governing the Federal participation in bridges on Federal dams.

3. An amendment to Section 3 was adopted at the suggestion of the Department of the Interior. It eliminates from the bill the authority for the Secretary of the Interior to amend existing contracts for repayment of American Falls Dam obligations if he finds that the combined repayment on the existing dam and the replacement dam exceeds the repayment capabilities of the water users.

Testimony available to the Committee indicates that adequate capability with which to meet the combined obligations of the spaceholders exists—if the anticipated falling water contract with the Idaho Power Company is consummated. Should the falling water arrangement not be implemented, the Committee acknowledges that there may be an obligation in the future to consider some level of legislative relief to spaceholders.

4. An amendment to Section 4 was adopted to more clearly provide that the contemplated falling water contract not impair other authorized purposes of the project.

5. The Committee also adopted an amendment to Section 5 as recommended by the Department of the Interior. This amendment deletes language from S. 1529 that would establish binding arbitration machinery to settle disputes over designs which might arise between the Secretary of the Interior and the constructing agency. The Committee believes that the Secretary should have the ultimate authority over designs and specifications since the structure will be government-owned and operated after completion of construction. The amendment to Section 5 also requires that costs incurred by the Secretary, in review of constructing agency designs and plans, shall be reimbursed to the United States in lieu of being nonreimbursable, as provided in S. 1529 as referred to the Committee.

6. An amendment to Section 1 was adopted to conform the text of the bill to the amended language of Section 5.

COSTS

The Committee estimate of total Federal cost associated with the implementation of S. 1529 is developed below:

Recreation and fish and wildlife enhancement facilities	$400,000
Federal appropriations to cover construction cost chargeable to Fort Hall Indian Reservation	750,000
Review of constructing agency designs and plans	200,000
Total	1,350,000

The cost of replacing American Falls Dam is approximately $25 million. This will be financed completely from non-Federal sources.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs on the basis of a voice vote recommends that S. 1529, as amended, be passed.

DEPARTMENTAL COMMUNICATIONS

The report of the Department of the Interior dated October 5, 1973, recomending enactment of S. 1529, is set forth below in its entirety. Also set forth below is a letter from the Department of the Interior dated November 30, 1973.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., October 5, 1973.

Hon. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department concerning H.R. 6781, H.R. 6782 and S. 1529 similar bills to authorize replacement of the American Falls Dam in Idaho.

We recommend that H.R. 6782 be enacted with the amendments set forth below. In the alternative, we recommend enactment of S. 1529 as passed by the Senate if modified to conform with the views set forth below. Since we support enactment of H.R. 6782 and have not completed our review of the plan of replacing American Falls Dam specified in H.R. 6781, we cannot support enactment at this time of H.R. 6781.

The Bills.—H.R. 6782 would authorize the Secretary of the Interior to negotiate and enter into agreements with the American Falls Reservoir District or an appropriate agency representing the district which would authorize the agency to finance the major costs and provide for construction of a replacement dam for the existing American Falls Dam. Upon completion, the United States would take title to the dam and it would be a feature of the Upper Snake River reclamation project, operated and maintained by the Secretary. The dam would be considered a "government dam" as defined in the Federal Power Act. Holders of storage rights in the existing reservoir would not be affected by replacement of the dam and the existing contract rights of such spaceholders with the Secretary would be reaffirmed except as modified by the bill. The bill would authorize the constructing agency to enter into contracts with current spaceholders providing for repayment of the replacement dam's cost. The Secretary would be a party to such contracts and he would be authorized to amend existing contracts to extend the repayment periods as necessary to bring the combined repayment obligations within the spaceholders' repayment capacity. The constructing agency would be authorized to contract with a non-Federal entity for the use of falling water for power generation. The Secretary would be authorized to provide facilities for public recreation and fish and wildlife conservation in connection with the replacement dam and costs would be repaid in accordance with the Federal Water Project Recreation Act. Construction of the replacement dam could not begin until the Secretary had approved the designs and specifications.

S. 1529 in the Senate was identical to H.R. 6782 and passed the Senate with several amendments which are discussed below in connection with the amendments we recommend be made to H.R. 6782.

H.R. 6781 differs from H.R. 6782 in that it authorizes the Secretary of the Interior directly to construct, operate and maintain the replacement dam as part of the Upper Snake River project under the Federal Reclamation laws in accordance with the plan set forth in the Bureau of Reclamation's report dated December 1972 entitled "American Falls Dam Replacement". The dam would serve irrigation, flood control, electric power generation, fish and wildlife and recreation purposes, except that power generation facilities other than those necessary to accommodate the future addition of hydroelectric power would not be installed unless subsequently authorized by Congress. The bill authorizes appropriation of $29 million to construct the dam and provides that costs of improving the relocated highway across the top of the replacement dam to present day standards would be nonreimbursable to the Federal Government under the provisions of section 208 of the Flood Control Act of 1962. Public recreation and fish and wildlife conservation costs would be repaid in accordance with the Federal Water Project Recreation Act. Costs associated with the provisional features to accommodate future hydroelectric power would be deferred until power production is authorized. The interest rate applicable to the project for repayment purposes would be based on the long-term U.S. Governmental debt interest rate.

Background.—The Minidoka Project was authorized by the Secretary of the Interior on April 23, 1904, under the Reclamation Act of 1902. American Falls Dam, a major feature of the Minidoka Project, was built by the Bureau of Reclamation in 1927. The dam is located on the Snake River in southeastern Idaho west of the town of Pocatello. American Falls Reservoir, with a capacity of 1.7 million acre-feet, is the largest storage reservoir in the Upper Snake River Basin and contributes almost half the usable storage on the main stem of the Upper Snake River. Nearly 900,000 acres of land receive irrigation water from the reservoir and as of September 30, 1972, only $578,516.52 of irrigation costs remained unrepaid to the United States of the total Federal irrigation investment amounting to $7,511,087.11. There is an additional unpaid power obligation of $404,365. Abnormal cracking throughout the concrete dam was reported as early as 1929 and has become progressively more severe. The condition of the dam has been closely monitored through regular biennial inspections. As the result of a core-drilling program in the early 1960's it was discovered that the concrete in portions of the dam was in a relatively advanced stage of deterioration due to a chemical reaction between alkalis in the cement and the aggregate. This type of reaction was unknown at the time the dam was built and has resulted in a significant loss in its strength and durability. Incident to the deterioration of the dam is the deteriorating condition of the existing two-lane State Highway 39 on the dam. This hazardous condition has resulted in the application of stringent traffic control procedures by the Idaho Department of Highways.

Studies in 1968 by a private board of consultants, consisting of three nationally known civil engineers, confirmed the Bureau of Reclamation's findings concerning the safety of the dam. The board stated that replacement or rehabilitation of the dam is desirable and that the choice between replacement and rehabilitation should be based on a

comparison of detailed designs, cost estimates and useful life of the dam after such work had been completed.

The condition of the dam has necessitated careful regulation of reservoir storage to avoid harmful pressures on the thin upper portion of the structure. For a number of years, winter storage has been restricted to 8 feet below the maximum reservoir water surface elevation in order to prevent ice pressures on top of the dam. Maximum storage is now limited to 11.3 feet below full pool which reduces the reservoir storage capacity to 1,125,000 acre-feet or approximately 66 percent of maximum design capacity.

In December 1972, the Bureau of Reclamation's Regional Director completed a preliminary special report which identifies a plan for replacing the dam and developing related multipurpose features. The report has not been fully reviewed by this Department or other appropriate agencies and does not necessarily reflect the views of the Secretary of the Interior. A copy of the report entitled "American Falls Dam Replacement" is enclosed.

More recently the reservoir spaceholders and the Idaho Power Company have proposed a plan to replace the existing American Falls Dam through non-Federal financing. A formal report has not been prepared on their plan, but we understand its general approach is that the spaceholders would obtain the right to replace the dam and to enter into a 50 year falling water contract for power with a right of renewal. The spaceholders would obtain financing for the new dam by the sale of tax exempt bonds and would assist Idaho Power Company in obtaining a Federal Power Commission license for construction of a powerplant at the dam. The Idaho Power Company would pay to the spaceholders an amount of money equal to the annual requirements for interest and amortization of the spaceholders bonds over a 40 year period, up to the actual cost of the dam but not more than $19 million plus interest. The spaceholders would pay any additional cost over the $19 million plus interest and the costs of replacing the existing highway river crossing and facilities for recreation, fish and wildlife and public health and safety.

Discussion.—In order to retain the full benefits of the American Falls Reservoir, it is apparent that the present dam must be replaced. The regional economy is dependent to a significant degree on the dam and reservoir and would benefit from the proposed replacement, both in terms of additional direct utility from the project and elimination of future uncertainty. We note that non-Federal hydroelectric power would be included as part of the project, helping to meet regional energy requirements without adverse thermal power production impacts. Because plans for the replacement dam will be subject to approval by and execution of an agreement with the Secretary, we see no need for licensing the dam under the Federal Power Act. The bill obviates the licensing requirement by making the dam a "government dam" within the meaning of the Federal Power Act. The proposed powerplant would, however, require a license.

H.R. 6782 adopts a plan which permits the substantial benefits described above to be obtained without cost to the Federal Government, except for public, recreational, and fish and, wildlife conservation costs which would be shared with non-Federal interests in accordance with

the Federal Water Project Recreation Act. By amendment suggested below, relatively small Federal appropriations would also be sought for the proportionate share of costs assigned to the Fort Hall Indian Reservation. The plan thus calls for only minimal Federal expenditures and we believe the Federal cost is well worthwhile in view of the substantial benefits to the local economy.

Amendments.—Sections 1 and 4 of H.R. 6782 refer to the American Falls Dam and Reservoir being a part of the Upper Snake River Project. The existing American Falls Dam was authorized as a part of the Minidoka Project. The many water service and repayment contracts associated with American Falls Dam are identified as Minidoka Project contracts. The proposal is to replace a Minidoka Project feature without changing its size or water customers. Any new authorizations should continue to identify American Falls Dam as a part of the Minidoka Project and appropriate changes should therefor be made in the bill title and in sections 1 and 3 of the bill (page 2, lines 1, 5 and 9 and page 3, line 23) substituting "Minidoka Project" for "Upper Snake River Project". In addition, we recommend that the word "district" be deleted in line 6, section 1 and the words "present spaceholders" be substituted therefor. This change (which was adopted by the Senate in S. 1529) will provide greater flexibility in making final arrangements for replacement of the dam and will permit representation of spaceholders not now included in the American Falls Reservoir District.

With particular reference to protection of the Indian tribal interests of the Fort Hall Reservation we recommend that the bill be amended to assure that the level of the American Falls Reservoir not be raised and that appropriate action be taken to control any erosion which could adversely affect Indian lands. To accomplish this the following should be added at the end of section 1 of the bill:

"The construction and operation of the replacement dam shall not result in an increase in the elevation of the reservoir water surface above that maintained for the original dam. Such construction and operation shall include provision for the correction and prevention of erosion related to the reservoir or for the full and adequate compensation of adjacent land owners (including owners of land subject to a flowage easement for the reservoir) if such erosion cannot be corrected or prevented."

In our view, this language is preferable to the roughly equivalent amendment of S. 1529 adopted by the Senate.

The last proviso in section 3 authorizes the Secretary to extend the repayment periods for existing repayment contracts so that the combined repayment obligation for the existing dam and the replacement dam are within the spaceholders' repayment capacity. We are not aware of the need for this provision and believe it is inappropriate that the United States bear costs that might result from deferment of existing obligations. We therefore recommend deletion of this proviso (lines 4 through 8 on page 3).

If an existing spaceholder is satisfied with the partial water supply that he now receives with limited operations of American Falls Dam and Reservoir and prefers not to sign a new contract, the bill leaves

the position of the United States unclear. It is not desirable to provide that construction will not be started until contracts are obtained from all spaceholders, since this would mean that any spaceholder would have veto power over the entire arrangement. Delivery of water should, however, be made contingent upon execution of such contracts. Therefore we recommend that section 3 be modified by striking on, page 2, line 24 the words "shall require" and by inserting in place thereof the word "the" and in line 25, following the word "spaceholders" by deleting "to" and inserting the word "shall". On line 25 and 26 the words "upon fulfillment of the contract obligation" should be deleted and in lieu thereof the words "the execution of such contracts and the fulfillment of the obligation thereunder" should be inserted. S. 1529 includes this amendment.

In order to provide the Secretary with a means of reviewing the falling water contract provided for in section 4 of the bill in advance, we recommend that the proviso set forth in that section be modified to read as follows:

"*Provided*, That said contract for falling water shall be approved by the Secretary and shall not impair the efficiency of the project to serve the other purposes of the Minidoka Project."

This language is preferable to the similar amendment to S. 1529 adopted by the Senate. We note that H.R. 6782 does not make specific reference to purposes to be served by the dam. We understand that those purposes are the same as those of the existing dam.

Prior to approval of the plans for the dam and reservoir, the Secretary would review, among other matters, the facilities planned for mitigation of any loss or damage to recreational, fish and wildlife values, the minimum facilities necessary for health and safety of reservoir users and others and the plans for any river highway crossing affecting project facilities. To make clear that the Secretary has authority to approve all such facilities associated with the replacement dam and the plan of construction, and to make clear that the cost of Secretarial review of the designs, specifications, plans and construction would be borne by the project beneficiaries, we recommend that section 5 of the bill be amended to read as follows:

"SEC. 5. Construction of the replacement dam shall not be initiated until the Secretary has approved the designs and specifications of the dam and related facilities, and the plan of construction of the dam and of the proposed operation of the dam and reservoir. Costs incurred by the Secretary in reviewing such designs, specifications, plans and construction shall be included as project costs allocated to beneficiaries of the replacement dam and shall be reimbursable to the Secretary."

In this connection, we object seriously to the provision adopted by the Senate in S. 1529 which subjects the Secretary's determination concerning design, specifications and plan of operations to the possibility of an arbitration procedure with the constructing agency. Our support of the plan for replacing the American Falls Dam through financing and construction by a non-Federal agency is premised on the principle that the Federal government, which ultimately will own and operate the dam, will make the final determination as to its characteristics. The Senate passed S. 1529 is not acceptable unless section 5

is changed and we recommend that the section 5 set forth above be inserted for the bill's present provisions.

Sections 6 and 7 of the bill should be modified to make clear that the specific public recreation and fish and wildlife facilities referred to are for enhancement, rather than mitigation purposes, and to specify the costs involved. In addition, certain provisions need to be included in H.R. 6782 to take into account the fact that the Fort Hall Indian Agency is one of the spaceholders in American Falls Reservoir under an agreement with the Bureau of Reclamation for about 2.8 percent of the reservoir storage. To facilitate the future participation of the Fort Hall Indian Reservation in the replacement storage, appropriations should be authorized to pay the prorated construction costs apportionable to irrigation storage rights (costs of the replacement dam not otherwise paid for by the United States or the Idaho Power Company) of the Indian Reservation.

To accomplish these matters, in section 6 (lines 4 and 5, page 4) the word "enhancement", should be substituted for "conservation", and the following sentence added at the end:

"Specific facilities for public recreation may also be provided in accordance with the Land and Water Conservation Fund Act of 1965, (78 Stat. 897), as amended (16 U.S.C. 460) et. seq.)."

Section 7 should be revised to read:

"SEC. 7. There is hereby authorized to be appropriated for construction of specific facilities for public recreation and fish and wildlife enhancement the sum of $400,000 (July 1972 prices) plus or minus such amounts, if any, as may be required by reason of the changes in the cost of construction work of the type involved therein as shown by engineering cost indices. There are also authorized to be appropriated such funds as may be necessary to meet the prorated construction cost apportionable to the irrigation storage rights of the Michaud Division of the Fort Hall Indian Reservation for space in the reservoir behind the American Falls Replacement Dam and such cost shall be subject to the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 368a). There are also authorized to be appropriated such funds as are required for the operation and maintenance of the dam and related facilities."

Environmental.—Enclosed is a draft environmental impact statement concerning the American Falls Dam replacement as contemplated by H.R. 6782, prepared pursuant to section 102(2) (C) of the National Environmental Policy Act of 1969. The final environmental impact statement will be prepared and fully considered in determining whether to enter the agreements authorized by the bill and to approve plans for the replacement of the American Falls Dam.

The Office of Management and Budget has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JACK O. HORTON,
Assistant Secretary of the Interior.

MINIDOKA PROJECT, AMERICAN FALLS DAM REPLACEMENT, SPACEHOLDERS PLAN, IDAHO

ESTIMATED ADDITIONAL MAN-YEARS OF CIVILIAN EMPLOYMENT AND EXPENDITURES FOR THE FIRST 5 FISCAL YEARS (AS REQUIRED BY PUBLIC LAW 84-801, 70 STAT. 652)[1]

	1st year	2d year	3d year	4th year	5th year
Estimated additional man-years of civilian employment:					
Executive direction					
Administrative services and support:					
Administrative officer	1.0	1.0			
Clerical and stenographic					
Total, administrative	1.0	1.0			
Substantive (program):					
Engineering aids and technicians	1.0				
Engineers	2.0	2.0			
Inspectors	1.0	1.0			
Other personnel					
Total, substantive	4.0	3.0			
Total, positions	5.0	4.0			
Total estimated additional man-years	3.3	2.3			
Estimated additional expenditures:					
Personal services	$75,000	$60,000			
All others	785,000	430,000			
Total estimated expenditures	860,000	490,000			

[1] Salaries based on scales effective Oct. 1, 1973.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 30, 1973.

Hon. HAROLD T. JOHNSON,
Chairman, Subcommittee on Water and Power Resources, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. JOHNSON: During your subcommittee's November 15, 1973 hearing on H.R. 6781, H.R. 6782 and S. 1549 providing for the replacement of the American Falls Dam in Idaho, testimony by the spaceholders indicated the desirability of two changes in the amendments we recommended in our October 5, 1973 report on these bills. In accordance with your suggestion that we consult the spaceholders concerning these amendments, we have reached agreement with them concerning the following changes.

1. On page 4 of the report we suggested an amendment to section 1 of H.R. 6782 relating to elevation of the reservoir water surface and erosion control. To clarify our intent, we recommend that our amendment be revised to read:

"The construction and operation of the replacement dam shall not result in an increase in the elevation of the reservoir water surface above that maintained for the original dam, and provision shall be made for the correction and prevention of erosion related to the reservoir or for the full and adequate compensation of adjacent and landowners (including owners of land subject to a flowage easement for the reservoir) if such erosion cannot be corrected or prevented."

The revised language removes any implication that erosion control costs must be included as either a construction cost or an operation and maintenance expense. Construction of the dam and related facilities and the manner in which erosion costs shall be borne will be made under appropriate criteria, including such matters as cost effectiveness and consideration of environmental protection. The amendment as revised will assure continuance of the Bureau of Reclamation's current erosion control program.

2. On page 6 of our report, we recommended an amendment to section 5 which would require that the Secretary of the Interior approve the designs and specifications of the dam and related facilities prior to construction of the dam. As the spaceholders point out, this could result in a needless delay in construction of the dam while awaiting approval of the designs and specifications of related facilities. Prior to construction of the dam itself it is necessary only that the dam's design and specifications be approved and that there be agreement as to what the related facilities shall be. It is desirable, however, that the Secretary approve the designs and specifications of each related facility before it is constructed. To accomplish this we suggest an amendment to section 1 of the bill and a revision of our previously proposed amendment to section 5.

Section 1 of H.R. 6782 and of S. 1529 states ". . . the Secretary of the Interior is authorized to negotiate and enter into agreements . . . for the construction of a dam to replace the existing American Falls Dam . . ." Our interpretation is that the word "dam" in Section 1 means the dam itself together with all related facilities needed in connection with the replacement of the existing dam but to clarify this we recommend inclusion of the words "and related facilities" after the word "dam" on line 9, page 1 of both H.R. 6782 and S. 1529. Related facilities could include various items, such as facilities planned for mitigation of any loss or damage to recreational facilities, fish and wildlife values, the minimum facilities necessary for health and safety of reservoir users and others, and the plans for any river highway crossing affecting project facilities. This amendment will make it clear that the agreement for replacement of the dam will identify what related facilities are to be included.

Section 5 should be changed to read:

"SEC. 5. Construction of the replacement dam shall not be initiated until the Secretary has approved the designs and specifications of the dam and the plan of construction of the dam and of the proposed operation of the dam and reservoir. Construction of each related facility shall not be initiated until the Secretary has approved the designs and specifications thereof. Costs incurred by the Secretary in reviewing such designs, specifications, plans and construction shall be included as project costs allocated to beneficiaries of the replacement dam and shall be reimbursable to the Secretary."

This will reflect our view that the Secretary should retain the right to approve the designs and specifications of each individual related facility prior to initiating construction of that facility, as determined in the agreement for replacement of the American Falls Dam.

If we may be of further assistance to the subcommittee or provide additional information that will help expedite passage of S. 1529, please let me know.

Sincerely yours,

JACK HORTON,
Assistant Secretary of the Interior.

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Exhibit BB

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-531

13099-8

TAX EXEMPT STATUS OF OBLIGATIONS USED TO PROVIDE CERTAIN IRRIGATION FACILITIES

OCTOBER 3, 1975—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ULLMAN, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 9968]

The Committee on Ways and Means, to whom was referred the bill (H.R. 9968) to amend section 103 of the Internal Revenue Code of 1954 with respect to certain obligations used to provide irrigation facilities, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. SUMMARY

The bill, H.R. 9968, deals with the tax-exempt status of obligations the proceeds of which are to be used to reconstruct the American Falls Dam in Idaho. The dam is used for irrigation purposes but the water also has a subordinate use in generating electric energy. Under present law, an industrial development bond whose proceeds are used to build a dam that stores water for irrigation purposes may be eligible for tax-exempt status. However, in this case where the water has a subordinate use in generating electric energy, the eligibility of the bond issue for tax-exempt status is uncertain.

The American Falls Dam is under the supervision of the Bureau of Reclamation of the Department of Interior and has been restricted to two-thirds of its capacity because of certain structural defects. The Federal Government might well eventually appropriate the funds to reconstruct the dam. However, the American Falls Reservoir District is undertaking the reconstruction project now in order to make the dam fully operational. In addition, the Idaho Power Company is assisting the financing of the project and is to use the water for electric energy generation. It is the interrelationships of the use of the dam for furnishing water for irrigation purposes and the use of the water for electric energy that raises questions with the interpretation of the present exceptions to industrial development bond treatment. In view of

the special circumstances in this case, your committee believes it is appropriate to except the obligations for the reconstruction of the American Falls Dam from industrial development bond treatment which would allow these obligations to receive tax-exempt status.

Present Law

Present law provides that interest on obligations of State and local governments generally is exempt from Federal income tax. In 1968 tax-exempt status was withdrawn from industrial development bonds which State and local governments were using to finance and attract private industrial development within their jurisdictions.

Industrial development bonds are generally considered to be State or local obligations, a major portion of the proceeds of which are to be used in, and repaid by, a taxable trade or business. Such bonds are normally issued to acquire a facility for private business in which the beneficial ownership of the facility remains in the private trade or business, although (in order to secure repayment of the bonds) legal title normally remains with the State or local unit issuing the obligations.

When the industrial development bond limitation was enacted, exceptions were provided for certain small issues (sec. 103(c)(6)) and for certain specified public activities (sec. 103(c)(4)) in which cases tax-exempt status was continued. As initially enacted, one of the public activities for which an exemption was provided (sec. 103(c)(4)(E)) was "sewage or solid waste disposal facilities or facilities for the local furnishing of electric energy, gas or water."

In 1971, Congress amended the exception in subparagraph (E) to delete "water" and added the present law subparagraph (G) which extends the exception to "facilities for the furnishing of water, if available on reasonable demand to members of the general public."

As a result, in those cases where obligations are issued for facilities for the furnishing of water which meet the exception (under sec. 103(c)(4)(G)) but where the water is also used to generate electricity, it is uncertain as to whether the obligations would qualify for exempt status unless the use of the electric energy meets the "local furnishing test (under sec. 103(c)(4)(E)), which has been interpreted to cover an area of two contiguous counties.

Reasons for the Bill

The American Falls Reservoir District applied to the Internal Revenue Service in June 1974 for a ruling that bonds to be issued to finance the replacement and rehabilitation of the American Falls Dam would qualify as a tax-exempt issue under section 103(c)(4)(G). The Internal Revenue Service, however, had questions of interpretation with respect to the interrelationship of the exceptions for facilities for furnishing of water and the local furnishing of electric energy and their application to the specific facts of this case. The committee reviewed the facts involved, as described below, and believed it is appropriate to specifically except the bond issue in this case as a result of the special circumstances.

The original American Falls dam was constructed in 1927 by the Bureau of Reclamation. The dam was restricted to two-thirds of its

1.7 million acre foot capacity in 1972 by the Bureau of Reclamation of the Department of the Interior for safety reasons because of excessive pressures on the dam which were caused by an alkali-aggregate reaction and deterioration in the concrete.

Legislation was enacted on December 28, 1973, to permit replacement and rehabilitation of the American Falls dam by the American Falls Reservoir District, which is a political subdivision of the State of Idaho. Replacement of the existing dam by the American Falls Reservoir District is an action to be taken in lieu of waiting for a Federal appropriation that would enable the Bureau of Reclamation to build the replacement dam.

The Act of December 28, 1973, also provides that upon completion of construction the United States shall take title to the dam as a feature of the Minidoka Project, located in the upper Snake River basin, Idaho.

As the constructing agent, the American Falls Reservoir District was authorized to contract with an electric utility for the use of the falling water at the dam for hydroelectric power generation. Revenues from such a contract will help defer the costs of constructing the dam. Prior to the adoption of the Act of December 28, 1973, the Idaho Power Company, which is a spaceholder in the reservoir and which owns and operates a powerplant below the existing dam, expressed interest in the execution of a falling water contract. Subsequent to the adoption of the Act, the District, as the constructing agency, entered into negotiations with the Secretary of the Interior, the Idaho Power Company and the other water users for the preparation of various contracts including a contract for the use of falling water.

It was intended that in normal circumstances, substantially all of the falling water would be made available to the Power Company only when water was released from the dam for irrigation purposes. There has been no intention to release water specifically for use by the Idaho Power Company to generate electricity, except for 45,000 acre-feet (2.65 percent of the storage capacity) whose release the power company can schedule for the purpose of generating electric energy. Thus, the use of water for electric energy would be subordinated to the use of the water for irrigation.

Although the Federal Government might well eventually completely finance the reconstruction of the American Falls Dam, the American Falls Reservoir District is undertaking the reconstruction now in order to make the dam fully operational for the spaceholders (rather than the present restricted two-thirds capacity). If it were not for the use of the water by the Idaho Power Company for hydroelectric power generation, any bonds issued by the Reservoir District would presently qualify for tax-exempt status. In this case the Idaho Power Company has a limited spaceholder right (under 3 percent) and is financing a large portion of the debt to assist the reconstruction of the dam and has use of the falling water for its hydroelectric power generation purposes. In addition, since the dam is to be turned over the the Federal Government after its reconstruction for ownership and operation, in effect, this financing can ve viewed as saving the Federal Government the expenditure it would have had to make to reconstruct the dam several years in the future. In view of these special circumstances, your committee believes it is appropriate to extend tax-exempt status to the bonds to be issued to finance the reconstruction of the dam.

Explanation of the Bill

Your committee's bill adds a new exception to industrial development bond treatment to specifically allow tax-exempt status for the bonds issued to reconstruct the American Falls Dam. This exception is to apply to obligations for a dam which furnishes water for irrigation purposes which has a subordinate use in connection with the generation of electric energy by water if substantially all of the stored water is contractually available for release from the dam for irrigation purposes and if the water released is available on reasonable demand for members of the general public.

The committee intends that subordinate use of water for generating electric energy means that less than 10 percent of the normal supply of stored water may contractually be scheduled for release by the power company and used for generating electric energy. "Normal" refers to conditions that generally prevail in the service area of the reservoir, and it is recognized that unusually wet or dry weather can cause a significant distortion in the 2.65 percent of water contractually scheduled for release to be used for generating electric energy. The committee intends that such unusual circumstances not be guiding in determining the subordinate use of water. In addition, "normal" use does not include a temporary increase in water released for the power company following contractual default by a spaceholder and his water share being made available to other spaceholders under the terms of the contract for the construction and operation of the dam and its facilities.

Thus, the provision applies the requirements of subsection (c)(4)(G) where substantially all of the stored water (under normal weather and climatic conditions) is available for release to be used for irrigation in the American Falls Reservoir District. The requirement that the released water be available on reasonable demand to members of the general public is retained in the new subsection (e). The committee understands that the American Falls project conforms with this requirement.

Your committee's bill is to apply to obligations issued after the date of the enactment of this Act.

IV. Effect on the Revenues of the Bill and Vote of the Committee in Reporting the Bill

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made relative to the effect on the revenues of this bill. Your committee believes that the changes made by this bill will result in an annual revenue loss of about $1 million in each of the five fiscal years following the current fiscal year. No revenue loss is expected in the current fiscal year. The Treasury Department agrees with this statement.

In compliance with clause 2(l)(2)(B) of Rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote by the committee on the motion to report the bill. The bill was ordered reported by a unanimous voice vote.

V. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

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Chapter 1—Normal Taxes and Surtaxes

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Subchapter B—Computation of Taxable Income

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Part III—Items Specifically Excluded From Gross Income

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Sec. 103. Interest on Certain Governmental Obligations.

(a) General Rule.—Gross income does not include interest on—

(1) the obligations of a State, a Territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia;

(2) the obligations of the United States; or

(3) the obligations of a corporation organized under Act of Congress, if such corporation is an instrumentality of the United States and if under the respective Acts authorizing the issue of the obligations the interest is wholly exempt from the taxes imposed by this subtitle.

(b) Exception.—Subsection (a) (2) shall not apply to interest on obligations of the United States issued after September 1, 1917 (other than postal savings certificates of deposit, to the extent they represent deposits made before March 1, 1941), unless under the respective Acts authorizing the issuance thereof such interest is wholly exempt from the taxes imposed by this subtitle.

(c) Industrial Development Bonds.—

(1) Subsection (a)(1) not to apply.—Except as otherwise provided in this subsection, any industrial development bond shall be treated as an obligation not described in subsection (a)(1).

(2) Industrial development bond.—For purposes of this subsection, the term "industrial development bond" means any obligation—

(A) which is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business carried on by any person who is not an exempt person (within the meaning of paragraph (3)), and

(B) the payment of the principal or interest on which (under the terms of such obligation or any underlying arrangement) is, in whole or in major part—

(i) secured by any interest in property used or to be used in a trade or business or in payments in respect of such property, or

(ii) to be derived from payments in respect of property, or borrowed money, used or to be used in a trade or business.

(3) EXEMPT PERSON.—For purposes of paragraph (2)(A), the term "exempt person" means—

(A) a governmental unit, or

(B) an organization described in section 501(c)(3) and exempt from tax under section 501(a) (but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business, determined by applying section 513(a) to such organization).

(4) CERTAIN EXEMPT ACTIVITIES.—Paragraph (1) shall not apply to any obligation which is issued as part of an issue substantially all of the proceeds of which are to be used to provide—

(A) residential real property for family units,

(B) sports facilities,

(C) convention or trade show facilities,

(D) airports, docks, wharves, mass commuting facilities, parking facilities, or storage or training facilities directly related to any of the foregoing,

(E) sewage or solid waste disposal facilities or facilities for the local furnishing of electric energy or gas,

(F) air or water pollution control facilities, or

(G) facilities for the furnishing of water, if available on reasonable demand to members of the general public.

(5) INDUSTRIAL PARKS.—Paragraph (1) shall not apply to any obligation issued as part of an issue substantially all of the proceeds of which are to be used for the acquisition or development of land as the site for an industrial park. For purposes of the preceding sentence, the term "development of land" includes the provision of water, sewage, drainage, or similar facilities, or of transportation, power, or communication facilities, which are incidental to use of the site as an industrial park, but, except with respect to such facilities, does not include the provision of structures or buildings.

(6) EXEMPTION FOR CERTAIN SMALL ISSUES.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any obligation issued as part of an issue the aggregate authorized face amount of which is $1,000,000 or less and substantially all of the proceeds of which are to be used (i) for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation, or (ii) to redeem part or all of a prior issue which was issued for purposes described in clause (i) or this clause.

(B) CERTAIN PRIOR ISSUES TAKEN INTO ACCOUNT.—If—

(i) the proceeds of two or more issues of obligations (whether or not the issuer of each such issue is the same)

are or will be used primarily with respect to facilities located in the same incorporated municipality or located in the same county (but not in any incorporated municipality),

(ii) the principal user of such facilities is or will be the same person or two or more related persons, and

(iii) but for this subparagraph, subparagraph (A) would apply to each such issue,

then, for purposes of subparagraph (A), in determining the aggregate face amount of any later issue there shall be taken into account the face amount of obligations issued under all prior such issues and outstanding at the time of such later issue (not including as outstanding any obligation which is to be redeemed from the proceeds of the later issue).

(C) RELATED PERSONS.—For purposes of this paragraph and paragraph (7), a person is a related person to another person if—

(i) the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), or

(ii) such persons are members of the same controlled group of corporations (as defined in section 1563(a), except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein).

(D) $5,000,000 LIMIT IN CERTAIN CASES.—At the election of the issuer, made at such time and in such manner as the Secretary or his delegate shall by regulations prescribe, with respect to any issue this paragraph shall be applied—

(i) by substituting "$5,000,000" for "$1,000,000" in subparagraph (A), and

(ii) in determining the aggregate face amount of such issue, by taking into account not only the amount described in subparagraph (B), but also the aggregate amount of capital expenditures with respect to facilities described in subparagraph (E) paid or incurred during the 6-year period beginning 3 years before the date of such issue and ending 3 years after such date (and financed otherwise than out of the proceeds of outstanding issues to which subparagraph (A) applied), as if the aggregate amount of such capital expenditures constituted the face amount of a prior outstanding issue described in subparagraph (B).

(E) FACILITIES TAKEN INTO ACCOUNT.—For purposes of subparagraph (D)(ii), the facilities described in this subparagraph are facilities—

(i) located in the same incorporated municipality or located in the same county (but not in any incorporated municipality), and

(ii) the principal user of which is or will be the same person or two or more related persons.

For purposes of clause (i), the determination of whether or not facilities are located in the same governmental unit shall be made as of the date of issue of the issue in question.

(F) CERTAIN CAPITAL EXPENDITURES NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (D)(ii), any capital expenditure—

(i) to replace property destroyed or damaged by fire, storm, or other casualty, to the extent of the fair market value of the property replaced,

(ii) required by a change made after the date of issue of the issue in question in a Federal or State law or local ordinance of general application or required by a change made after such date in rules and regulations of general application issued under such a law or ordinance, or

(iii) required by circumstances which could not be reasonably foreseen on such date of issue or arising out of a mistake of law or fact (but the aggregate amount of expenditures not taken into account under this clause with respect to any issue shall not exceed $1,000,000),

shall not be taken into account.

(G) LIMITATION ON LOSS OF TAX EXEMPTION.—In applying subparagraph (D)(ii) with respect to capital expenditures made after the date of any issue, no obligation issued as a part of such issue shall be treated as an obligation not described in subsection (a)(1) by reason of any such expenditure for any period before the date on which such expenditure is paid or incurred.

(H) CERTAIN REFINANCING ISSUES.—In the case of any issue described in subparagraph (A)(ii), an election may be made under subparagraph (D) only if all of the prior issues being redeemed are issues to which subparagraph (A) applies. In applying subparagraph (D)(ii) with respect to such a refinancing issue, capital expenditures shall be taken into account only for purposes of determining whether the prior issues being redeemed qualified (and would have continued to qualify) under subparagraph (A).

(7) EXCEPTION.—Paragraphs (4), (5), and (6) shall not apply with respect to any obligation for any period during which it is held by a person who is a substantial user of the facilities or a related person.

(d) ARBITRAGE BONDS.—

(1) SUBSECTION (a)(1) NOT TO APPLY.—Except as provided in this subsection, any arbitrage bond shall be treated as an obligation not described in subsection (a)(1).

(2) ARBITRAGE BOND.—For purposes of this subsection, the term "arbitrage bond" means any obligation which is issued as part of an issue all or a major portion of the proceeds of which are reasonably expected to be used directly or indirectly—

(A) to acquire securities (within the meaning of section 165(g)(2)(A) or (B)) or obligations (other than obligations described in subsection (a)(1)) which may be reasonably expected at the time of issuance of such issue, to produce a yield over the term of the issue which is materially higher (taking into account any discount or premium) than the yield on obligations of such issue, or

(B) to replace funds which were used directly or indirectly to acquire securities or obligations described in subparagraph (A).

(3) EXCEPTION.—Paragraph (1) shall not apply to any obligation—

(A) which is issued as part of an issue substantially all of the proceeds of which are reasonably expected to be used to provide permanent financing for real property used or to be used for residential purposes for the personnel of an educational institution (within the meaning of section 151(e)(4)) which grants baccalaureate or higher degrees, or to replace funds which were so used, and

(B) the yield on which over the term of the issue is not reasonably expected, at the time of issuance of such issue, to be substantially lower than the yield on obligations acquired or to be acquired in providing such financing.

This paragraph shall not apply with respect to any obligation for any period during which it is held by a person who is a substantial user of property financed by the proceeds of the issue of which such obligation is a part, or by a member of the family (within the meaning of section 318(a)(1)) of any such person.

(4) SPECIAL RULES.—For purposes of paragraph (1), an obligation shall not be treated as an arbitrage bond solely by reason of the fact that—

(A) the proceeds of the issue of which such obligation is a part may be invested for a temporary period in securities or other obligations until such proceeds are needed for the purpose for which such issue was issued, or

(B) an amount of the proceeds of the issue of which such obligation is a part may be invested in securities or other obligations which are part of a reasonably required reserve or replacement fund.

The amount referred to in subparagraph (B) shall not exceed 15 percent of the proceeds of the issue of which such obligation is a part unless the issuer establishes that a higher amount is necessary.

(5) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

(e) CERTAIN IRRIGATION DAMS.—A dam for the furnishing of water for irrigation purposes which has a subordinate use in connection with the generation of electric energy by water shall be treated as meeting the requirements of subsection (c)(4)(G) if—

(1) substantially all of the stored water is contractually available for release from such dam for irrigation purposes, and

(2) the water so released is available on reasonable demand to members of the general public.

[(e)] (f) CROSS REFERENCES.—

For provisions relating to the taxable status of—

(1) Bonds and certificates of indebtedness authorized by the First Liberty Bond Act, see sections 1 and 6 of that Act (40 Stat. 35, 36; 31 U.S.C. 746, 755);

(2) Bonds issued to restore or maintain the gold reserve, see section 2 of the Act of March 14, 1900 (31 Stat. 46; 31 U.S.C. 408);

(3) Bonds, notes, certificates of indebtedness, and Treasury bills authorized by the Second Liberty Bond Act, see sections 4, 5 (b) and (d), 7, 18 (b) and 22(d) of that Act as amended (40 Stat. 290; 46 Stat. 20, 775; 40 Stat. 291, 1310; 55 Stat. 8; 31 U.S.C. 752a, 754, 747, 753, 757c);

(4) Bonds, notes, and certificates of indebtedness of the United States and bonds of the War Finance Corporation owned by certain nonresidents, see section 3 of the Fourth Liberty Bond Act, as amended (40 Stat. 1311, § 4; 31 U.S.C. 750);

(5) Certificates of indebtedness issued after February 4, 1910, see section 2 of the Act of that date (36 Stat. 192; 31 U.S.C. 769);

(6) Consols of 1930, see section 11 of the Act of March 14, 1900 (31 Stat. 48; 31 U.S.C. 751);

(7) Obligations and evidences of ownership issued by the United States or any of its agencies or instrumentalities on or after March 28, 1942, see section 4 of the Public Debt Act of 1941, as amended (c. 147, 61 Stat. 180; 31 U.S.C. 742a);

(8) Commodity Credit Corporation obligations, see section 5 of the Act of March 8, 1938 (52 Stat. 108; 15 U.S.C. 713a-5);

(9) Debentures issued by Federal Housing Administrator, see sections 204(d) and 207(i) of the National Housing Act, as amended (52 Stat. 14, 20; 12 U.S.C. 1710, 1713);

(10) Debentures issued to mortgages by United States Maritime Commission, see section 1105(c) of the Merchant Marine Act, 1936, as amended (52 Stat. 972; 46 U.S.C. 1275);

(11) Federal Deposit Insurance Corporation obligations, see section 15 of the Federal Deposit Insurance Act (64 Stat. 890; 12 U.S.C. 1825);

(12) Federal Home Loan Bank obligations, see section 13 of the Federal Home Loan Bank Act, as amended (49 Stat. 295, § 8; 12 U.S.C. 1433);

(13) Federal savings and loan association loans, see section 5 (h) of the Home Owners' Loan Act of 1933, as amended (48 Stat. 133; U.S.C. 1464);

(14) Federal Savings and Loan Insurance Corporation obligations, see section 402(e) of the National Housing Act (48 Stat. 1257; 12 U.S.C. 1725);

(15) Home Owners' Loan Corporation bonds, see section 4(c) of the Home Owners' Loan Act of 1933, as amended (48 Stat. 64, c. 168; 12 U.S.C. 1463);

(16) Obligations of Central Bank for Cooperatives, production credit corporations, production credit associations, and banks for cooperatives, see section 63 of the Farm Credit Act of 1933 (48 Stat. 267; 12 U.S.C. 1138c);

(17) Panama Canal bonds, see section 1 of the Act of December 21, 1904 (34 Stat. 5; 31 U.S.C. 743), section 8 of the Act of June 28, 1902 (32 Stat. 484; 31 U.S.C. 744), and section 39 of the Tariff Act of 1909 (36 Stat. 117; 31 U.S.C. 745);

(18) Philippine bonds, etc., issued before the independence of the Philippines, see section 9 of the Philippine Independence Act (48 Stat. 463; 48 U.S.C. 1239);

(19) Postal savings bonds, see section 10 of the Act of June 25, 1910 (36 Stat. 817; 39 U.S.C. 760);

(20) Puerto Rican bonds, see section 3 of the Act of March 2, 1917, as amended (50 Stat. 855; 48 U.S.C. 745);

(21) Treasury notes issued to retire national bank notes, see section 18 of the Federal Reserve Act (38 Stat. 268; 12 U.S.C. 447);

(22) United States Housing Authority obligations, see sections 5(e) and 20(b) of the United States Housing Act of 1937 (50 Stat. 890, 898; 42 U.S.C. 1405, 1420);

(23) Virgin Islands insular and municipal bonds, see section 1 of the Act of October 27, 1949 (63 Stat. 940; 48 U.S.C. 1403).

VI. Other Matters Required To Be Discussed Under House Rules

In compliance with clauses 2(l)(3) and 2(l)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made.

With regard to subdivision (A) of Clause 3, the Committee advises that its oversight findings led it to the conclusion that an amendment to the Internal Revenue Code is necessary to establish the eligibility of bons issued by the American Falls Reservoir District for a dam and related facilities for tax-exempt status as industrial development bonds.

In compliance with subdivision (B) of Clause 3, the committee states that the change made in section 103 of the Internal Revenue Code will produce an annual revenue loss of about $1 million at current tax rates for the period of maturity during which the bonds to be issued will be outstanding. Alternatively, the cost to the Federal Government of construction of this project as a direct expenditure presently is estimated at about $50 million.

With respect to subdivisions (C) and (D) of Clause 3, the Committee advises that no estimate or comparison has been prepared by the Director of the Congressional Budget Office relative to any of the provisions of H.R. 9968, nor have any oversight findings or recommendations been made by the Committee on Government Operations with respect to the subject matter contained in H.R. 9968.

In compliance with clause 2(l)(4) of Rule XI, the Committee states that the bonds to be issued followed enactment of H.R. 9968 are not expected to have an inflationary impact on prices and in costs in the operation of the national economy.

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Exhibit CC

13096-9

Calendar No. 546

94TH CONGRESS
1st Session

SENATE

REPORT
No 94-570

TAX EXEMPT STATUS OF OBLIGATIONS USED TO PROVIDE CERTAIN IRRIGATION FACILITIES

DECEMBER 16 (legislative day, DECEMBER 15), 1975.—Ordered to be printed

Mr. LONG, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 9968]

The Committee on Finance, to which was referred the bill (H.R. 9968) to amend section 103 of the Internal Revenue Code of 1954 with respect to certain obligations used to provide irrigation facilities, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. SUMMARY

H.R. 9968 would clarify the tax-exempt status of obligations the proceeds of which are to be used to reconstruct the American Falls Dam in Idaho.

Present law provides that an industrial revenue bond whose proceeds are used to build a dam to store water for irrigation purposes may be eligible for tax-exempt status. Where, however, the water also has a subordinate use in generating electricity, the status of the bonds is not clear under existing law. The American Falls Dam is used principally for irrigation purposes, but the water has a subordinate use in generating electricity. H.R. 9968 provides that industrial revenue bonds issued in such a case may qualify for exempt status if substantially all of the stored water is contractually available for irrigation purposes and the water is available on reasonable demand to members of the general public.

II. GENERAL EXPLANATION OF THE BILL

Present law provides that interest on obligations of State and local governments generally is exempt from Federal income tax. In 1968 tax-exempt status was withdrawn from industrial development bonds

which State and local governments were using to finance and attract private industrial development within their jurisdictions.

Industrial development bonds are generally considered to be State or local obligations, a major portion of the proceeds of which are to be used in, and repaid by, a taxable trade or business. Such bonds are normally issued to acquire a facility for private business in which the beneficial ownership of the facility remains in the private trade or business, although (in order to secure repayment of the bonds) legal title normally remains with the State or local unit issuing the obligations.

When the industrial development bond limitation was enacted, exceptions were provided for certain small issues (sec. 103(c)(6)) and for certain specified public activities (sec. 103(c)(4)) in which cases tax-exempt status was continued. As initially enacted, one of the public activities for which an exemption was provided (sec. 103(c)(4)(E)) was "sewage or solid waste disposal facilities or facilities for the local furnishing of electric energy, gas or water."

In 1971, Congress amended the exception in subparagraph (E) to delete "water" and added the present law subparagraph (G) which extends the exception to "facilities for the furnishing of water, if available on reasonable demand to members of the general public."

As a result, in those cases where obligations are issued for facilities for the furnishing of water which meet the exception (under sec. 103(c)(4)(G)) but where the water is also used to generate electricity, it is uncertain as to whether the obligations would qualify for exempt status unless the use of the electric energy meets the "local" furnishing test (under sec. 103(c)(4)(E)), which has been interpreted to cover an area of two contiguous counties.

The American Falls Reservoir District applied to the Internal Revenue Service in June 1974 for a ruling that bonds to be issued to finance the replacement and rehabilitation of the American Falls Dam would qualify as a tax-exempt issue under section 103(c)(4)(G). The Internal Revenue Service, however, had questions of interpretation with respect to the interrelationship of the exceptions for facilities for furnishing of water and the local furnishing of electric energy and their application to the specific facts of this case. The committee reviewed the facts involved, as described below, and believed it is appropriate to specifically except the bond issue in this case as a result of the special circumstances.

The original American Falls Dam was constructed in 1927 by the Bureau of Reclamation. The dam was restricted to two-thirds of its 1.7 million acre foot capacity in 1972 by the Bureau of Reclamation of the Department of the Interior for safety reasons because of excessive pressures on the dam which were caused by an alkali-aggregate reaction and deterioration in the concrete.

Legislation was enacted on December 28, 1973, to permit replacement and rehabilitation of the American Falls Dam by the American Falls Reservoir District, which is a political subdivision of the State of Idaho. Replacement of the existing dam by the American Falls Reservoir District is an action to be taken in lieu of waiting for a Federal appropriation that would enable the Bureau of Reclamation to build the replacement dam.

The Act of December 28, 1973, also provides that upon completion of construction the United States shall take title to the dam as a feature of the Minidoka Project, located in the upper Snake River basin, Idaho.

As the constructing agent, the American Falls Reservoir District was authorized to contract with an electric utility for the use of the falling water at the dam for hydroelectric power generation. Revenues from such a contract with help defer the costs of constructing the dam. Prior to the adoption of the Act of December 28, 1973, the Idaho Power Company, which is a spaceholder in the reservoir and which owns and operates a powerplant below the existing dam, expressed interest in the execution of a falling water contract. Subsequent to the adoption of the Act, the District, as the constructing agency, entered into negotiations with the Secretary of the Interior, the Idaho Power Company and the other water users for the preparation of various contracts including a contract for the use of falling water.

It was intended that in normal circumstances substantially all of the falling water would be made available to the Power Company only when water was released from the dam for irrigation purposes. There has been no intention to release water specifically for use by the Idaho Power Company to generate electricity, except for 45,000 acre-feet (2.65 percent of the storage capacity) whose release the power company, in its capacity as a space holder in the irrigation district, can schedule for the purpose of generating electric energy. Thus, the use of water for electric energy would be subordinated to the use of the water for irrigation.

Although the Federal Government might well eventually completely finance the reconstruction of the American Falls Dam, the American Falls Reservoir District is undertaking the reconstruction now in order to make the dam fully operational for the spaceholders (rather than the present restricted two-thirds capacity). If it were not for the use of the water by the Idaho Power Company for hydroelectric power generation, any bonds issued by the Reservoir District would presently qualify for tax-exempt status. In this case the Idaho Power Company has a limited spaceholder right (under 3 percent) and is financing a large portion of the debt to assist the reconstruction of the dam and has use of the falling water for its hydroelectric power generation purposes. In addition, since the dam is to be turned over to the Federal Government after its reconstruction for ownership and operation, in effect, this financing can be viewed as saving the Federal Government the expenditure it would have had to make to reconstruct the dam several years in the future. In view of these special circumstances, the committee believes it is appropriate to extend tax-exempt status to the bonds to be issued to finance the reconstruction of the dam.

The bill adds a new exception to industrial development bond treatment to specifically allow tax-exempt status for the bonds issued to reconstruct the American Falls Dam. This exception is to apply to obligations for a dam which furnishes water for irrigation purposes which has a subordinate use in connection with the generation of electric energy by water if substantially all of the stored water is contractually available for release from the dam for irrigation pur-

poses and if the water released is available on reasonable demand for members of the general public.

The committee intends that subordinate use of water for generating electric energy means that less than 10 percent of the normal supply of stored water may contractually be scheduled for release by the power company and used for generating electric energy. Normal refers to conditions that generally prevail in the service area of this reservoir, and it is recognized that unusually wet or dry weather can cause a significant distortion in the 2.65 percent of water contractually scheduled for release to be used for generating electric energy. The committee intends that such unusual circumstances not be guiding in determining the subordinate use of water. In addition, normal use does not include a temporary increase in water released for the power company following contractual default by a spaceholder and his water share being made available to other spaceholders under the terms of the contract for the construction and operation of the dam and its facilities.

Thus, the provision applies the requirements of subsection (c)(4)(G), where substantially all of the stored water (under normal weather and climatic conditions) is available for release to be used for irrigation in the American Falls Reservoir District. The requirement that the released water be available on reasonable demand to members of the general public is retained in the new subsection (e). The committee understands that the American Falls project conforms with this requirement.

The bill is to apply to obligations issued after the date of the enactment of this Act.

III. Costs of Carrying Out the Bill and Effect on the Revenues of the Bill

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs to be incurred in carrying out this bill and the effect on the revenues of the bill.

The committee estimates that the bill, relating to the tax-exempt status of obligations used to provide certain irrigation facilities, will result in an annual revenue loss of about $1 million in each of the five fiscal years following the current fiscal year. No revenue loss is expected in the current fiscal year.

IV. Vote of Committee in Reporting the Bill

In compliance with section 133 of the Legislative Reorganization Act, as amended, the following statement is made relative to the vote of the committee on reporting the bill. This bill was ordered favorably reported by the committee without a rollcall vote and without objection.

V. Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as

reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

* * * * * * *

Chapter 1—Normal Taxes and Surtaxes

* * * * * * *

Subchapter B—Computation of Taxable Income

* * * * * * *

Part III—Items Specifically Excluded From Gross Income

Sec. 103. Interest on Certain Governmental Obligations.

(a) General Rule.—Gross income does not include interest on—

(1) the obligations of a State, a Territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia;

(2) the obligations of the United States; or

(3) the obligations of a corporation organized under Act of Congress, if such corporation is an instrumentality of the United States and if under the respective Acts authorizing the issue of the obligations the interest is wholly exempt from the taxes imposed by this subtitle.

(b) Exception.—Subsection (a)(2) shall not apply to interest on obligations of the United States issued after September 1, 1917 (other than postal savings certificates of deposit, to the extent they represent deposits made before March 1, 1941), unless under the respective Acts authorizing the issuance thereof such interest is wholly exempt from the taxes imposed by this subtitle.

(c) Industrial Development Bonds.—

(1) Subsection (a)(1) not to apply.—Except as otherwise provided in this subsection, any industrial development bond shall be treated as an obligation not described in subsection (a)(1).

(2) Industrial development bond.—For purposes of this subsection, the term "industrial development bond" means any obligation—

(A) which is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business carried on by any person who is not an exempt person (within the meaning of paragraph (3)), and

(B) the payment of the principal or interest on which (under the terms of such obligation or any underlying arrangement) is, in whole or in major part—

(i) secured by any interest in property used or to be used in a trade or business or in payments in respect of such property, or

(ii) to be derived from payments in respect of property, or borrowed money, used or to be used in a trade or business.

(3) EXEMPT PERSON.—For purposes of paragraph (2)(A), the term "exempt person" means—

(A) a governmental unit, or

(B) an organization described in section 501(c)(3) and exempt from tax under section 501(a) (but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business, determined by applying section 513(a) to such organization).

(4) CERTAIN EXEMPT ACTIVITIES.—Paragraph (1) shall not apply to any obligation which is issued as part of an issue substantially all of the proceeds of which are to be used to provide—

(A) residential real property for family units,

(B) sports facilities,

(C) convention or trade show facilities,

(D) airports, docks, wharves, mass commuting facilities, parking facilities, or storage or training facilities directly related to any of the foregoing,

(E) sewage or solid waste disposal facilities or facilities for the local furnishing of electric energy or gas,

(F) air or water pollution control facilities, or

(G) facilities for the furnishing of water, if available on reasonable demand to members of the general public.

(5) INDUSTRIAL PARKS.—Paragraph (1) shall not apply to any obligation issued as part of an issue substantially all of the proceeds of which are to be used for the acquisition or development of land as the site for an industrial park. For purposes of the preceding sentence, the term "development of land" includes the provision of water, sewage, drainage, or similar facilities, or of transportation, power, or communication facilities, which are incidental to use of the site as an industrial park, but, except with respect to such facilities, does not include the provision of structures or buildings.

(6) EXEMPTION FOR CERTAIN SMALL ISSUES.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any obligation issued as part of an issue the aggregate authorized face amount of which is $1,000,000 or less and substantially all of the proceeds of which are to be used (i) for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation, or (ii) to redeem part or all of a prior issue which was issued for purposes described in clause (i) or this clause.

(B) CERTAIN PRIOR ISSUES TAKEN INTO ACCOUNT.—If—

(i) the proceeds of two or more issues of obligations (whether or not the issuer of each such issue is the same) are or will be used primarily with respect to facilities located in the same incorporated municipality or located in the same county (but not in any incorporated municipality),

(ii) the principal user of such facilities is or will be the same person or two or more related persons, and

(iii) but for this subparagraph, subparagraph (A) would apply to each such issue,

then, for purposes of subparagraph (A), in determining the aggregate face amount of any later issue there shall be taken into account the face amount of obligations issued under all prior such issues and outstanding at the time of such later issue (not including as outstanding any obligation which is to be redeemed from the proceeds of the later issue).

(C) RELATED PERSONS.—For purposes of this paragraph and paragraph (7), a person is a related person to another person if—

(i) the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), or

(ii) such persons are members of the same controlled group of corporations (as defined in section 1563(a), except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein).

(D) $5,000,000 LIMIT IN CERTAIN CASES.—At the election of the issuer, made at such time and in such manner as the Secretary or his delegate shall by regulations prescribe, with respect to any issue this paragraph shall be applied—

(i) by substituting "$5,000,000" for "$1,000,000" in subparagraph (A), and

(ii) in determining the aggregate fact amount of such issue, by taking into account not only the amount described in subparagraph (B), but also the aggregate amount of capital expenditures with respect to facilities described in subparagraph (E) paid or incurred during the 6-year period beginning 3 years before the date of such issue and ending 3 years after such date (and financed otherwise than out of the proceeds of outstanding issues to which subparagraph (A) applied), as if the aggregate amount of such capital expenditures constituted the face amount of a prior outstanding issue described in subparagraph (B).

(E) FACILITIES TAKEN INTO ACCOUNT.—For purposes of subparagraph (D)(ii), the facilities described in this subparagraph are facilities—

(i) located in the same incorporated municipality or located in the same county (but not in any incorporated municipality), and

(ii) the principal user of which is or will be the same person or two or more related persons.

For purposes of clause (i), the determination of whether or not facilities are located in the same governmental unit shall be made as of the date of issue of the issue in question.

(F) CERTAIN CAPITAL EXPENDITURES NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (D)(ii), any capital expenditure—

(i) to replace property destroyed or damaged by fire, storm, or other casualty, to the extent of the fair market value of the property replaced.

(ii) required by a change made after the date of issue of the issue in question in a Federal or State law or local

ordinance of general application or required by a change made after such date in rules and regulations of general application issued under such a law or ordinance, or

(iii) required by circumstances which could not be reasonably foreseen on such date of issue or arising out of a mistake of law or fact (but the aggregate amount of expenditures not taken into account under this clause with respect to any issue shall not exceed $1,000,000), shall not be taken into account.

(G) LIMITATION ON LOSS OF TAX EXEMPTION.—In applying subparagraph (D)(ii) with respect to capital expenditures made after the date of any issue, no obligation issued as a part of such issue shall be treated as an obligation not described in subsection (a)(1) by reason of any such expenditure for any period before the date on which such expenditure is paid or incurred.

(H) CERTAIN REFINANCING ISSUES.—In the case of any issue described in subparagraph (A)(ii), an election may be made under subparagraph (D) only if all of the prior issues being redeemed are issues to which subparagraph (A) applies. In applying subparagraph (D)(ii) with respect to such a refinancing issue, capital expenditures shall be taken into account only for purposes of determining whether the prior issues being redeemed qualified (and would have continued to qualify) under subparagraph (A).

(7) EXCEPTION.—Paragraphs (4), (5), and (6) shall not apply with respect to any obligation for any period during which it is held by a person who is a substantial user of the facilities or a related person.

(d) ARBITRAGE BONDS.—

(1) SUBSECTION (a)(1) NOT TO APPLY.—Except as provided in this subsection, any arbitrage bond shall be treated as an obligation not described in subsection (a)(1).

(2) ARBITRAGE BOND.—For purposes of this subsection, the term "arbitrage bond" means any obligation which is issued as part of an issue all or a major portion of the proceeds of which are reasonably expected to be used directly or indirectly—

(A) to acquire securities (within the meaning of section 165(g)(2)(A) or (B)) or obligations (other than obligations described in subsection (a)(1)) which may be reasonably expected at the time of issuance of such issue, to produce a yield over the term of the issue which is materially higher (taking into account any discount or premium) than the yield on obligations of such issue, or

(B) to replace funds which were used directly or indirectly to acquire securities or obligations described in subparagraph (A).

(3) EXCEPTION.—Paragraph (1) shall not apply to any obligation—

(A) which is issued as part of an issue substantially all of the proceeds of which are reasonably expected to be used to provide permanent financing for real property used or to be

used for residential purposes for the personnel of an educational institution (within the meaning of section 151(e)(4)) which grants baccalaureate or higher degrees, or to replace funds which were so used, and

(B) the yield on which over the term of the issue is not reasonably expected, at the time of issuance of such issue, to be substantially lower than the yield on obligations acquired or to be acquired in providing such financing.

This paragraph shall not apply with respect to any obligation for any period during which it is held by a person who is a substantial user of property financed by the proceeds of the issue of which such obligation is a part, or by a member of the family (within the meaning of section 318(a)(1)) of any such person.

(4) SPECIAL RULES.—For purposes of paragraph (1), an obligation shall not be treated as an arbitrage bond solely by reason of the fact that—

(A) the proceeds of the issue of which such obligation is a part may be invested for a temporary period in securities or other obligations until such proceeds are needed for the purpose for which such issue was issued, or

(B) an amount of the proceeds of the issue of which such obligation is a part may be invested in securities or other obligations which are part of a reasonably required reserve or replacement fund.

The amount referred to in subparagraph (B) shall not exceed 15 percent of the proceeds of the issue of which such obligation is a part unless the issuer establishes that a higher amount is necessary.

(5) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

(e) CERTAIN IRRIGATION DAMS.—A dam for the furnishing of water for irrigation purposes which has a subordinate use in connection with the generation of electric energy by water shall be treated as meeting the requirements of subsection (c)(4)(G) if—

(1) substantially all of the stored water is contractually available for release from such dam for irrigation purposes, and

(2) the water so released is available on reasonable demand to members of the general public.

[(e)] *(f)* CROSS REFERENCES.—

For provisions relating to the taxable status of—

(1) Bonds and certificates of indebtedness authorized by the First Liberty Bond Act, see sections 1 and 6 of that Act (40 Stat. 35, 36; 31 U.S.C. 746, 755);

(2) Bonds issued to restore or maintain the gold reserve, see section 2 of the Act of March 14, 1900 (31 Stat. 46; 31 U.S.C. 408);

(3) Bonds, notes, certificates of indebtedness, and Treasury bills authorized by the Second Liberty Bond Act, see sections 4, 5 (b) and (d), 7, 18 (b) and 22(d) of the Act as amended (40 Stat. 290; 46 Stat. 20, 775; 40 Stat. 291, 1310; 55 Stat. 8; 31 U.S.C. 752a, 754, 747, 753, 757c);

(4) Bonds, notes, and certificates of indebtedness of the United States and bonds of the War Finance Corporation owned by certain nonresidents, see section 3 of the Fourth Liberty Bond Act, as amended (40 Stat. 1311, § 4; 31 U.S.C. 750);

(5) Certificates of indebtedness issued after February 4, 1910, see section 2 of the Act of that date (36 Stat. 192; 31 U.S.C. 769);

(6) Consols of 1930, see section 11 of the Act of March 14, 1900 (31 Stat. 48; 31 U.S.C. 751);

(7) Obligations and evidences of ownership issued by the United States or any of its agencies or instrumentalities on or after March 28, 1942, see section 4 of the Public Debt Act of 1941, as amended (c. 147, 61 Stat. 180; 31 U.S.C. 742a);

(8) Commodity Credit Corporation obligations, see section 5 of the Act of March 8, 1938 (52 Stat. 108; 15 U.S.C. 713a–5);

(9) Debentures issued by Federal Housing Administrator, see sections 204(d) and 207(i) of the National Housing Act, as amended (52 Stat. 14, 20; 12 U.S.C. 1710, 1713);

(10) Debentures issued to mortgages by United States Maritime Commission, see section 1105(c) of the Merchant Marine Act, 1936, as amended (52 Stat. 972; 46 U.S.C. 1275);

(11) Federal Deposit Insurance Corporation obligations, see section 15 of the Federal Deposit Insurance Act (64 Stat. 890; 12 U.S.C. 1825);

(12) Federal Home Loan Bank obligations, see section 13 of the Federal Home Loan Bank Act, as amended (49 Stat. 295, § 8; 12 U.S.C. 1433);

(13) Federal savings and loan association loans, see section 5 (h) of the Home Owners' Loan Act of 1933, as amended (48 Stat. 133; U.S.C. 1464);

(14) Federal Savings and Loan Insurance Corporation obligations, see section 402(e) of the National Housing Act (48 Stat. 1257; 12 U.S.C. 1725);

(15) Home Owners' Loan Corporation bonds, see section 4(c) of the Home Owners' Loan Act of 1933, as amended (48 Stat. 644, c. 168; 12 U.S.C. 1463);

(16) Obligations of Central Bank for Cooperatives, production credit corporations, production credit associations, and banks for cooperatives, see section 63 of the Farm Credit Act of 1933 (48 Stat. 267; 12 U.S.C. 1138c);

(17) Panama Canal bonds, see section 1 of the Act of December 21, 1904 (34 Stat. 5; 31 U.S.C. 743), section 8 of the Act of June 28, 1902 (32 Stat. 484; 31 U.S.C. 744), and section 39 of the Tariff Act of 1909 (36 Stat. 117; 31 U.S.C. 745);

(18) Philippine bonds, etc., issued before the independence of the Philippines, see section 9 of the Philippine Independence Act (48 Stat. 463; 48 U.S.C. 1239);

(19) Postal savings bonds, see section 10 of the Act of June 25, 1910 (36 Stat. 817; 39 U.S.C. 760);

(20) Puerto Rican bonds, see section 3 of the Act of March 2, 1917, as amended (50 Stat. 855; 48 U.S.C. 745);

(21) Treasury notes issued to retire national bank notes, see section 18 of the Federal Reserve Act (38 Stat. 268; 12 U.S.C. 447);

(22) United States Housing Authority obligations, see sections 5(c) and 20(b) of the United States Housing Act of 1937 (50 Stat. 890, 898; 42 U.S.C. 1405, 1420);

(23) Virgin Islands insular and municipal bonds, see section 1 of the Act of October 27, 1949 (63 Stat. 940; 48 U.S.C. 1403).

○

Exhibit DD

Ir-7335

[CONFORMED COPY]

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

Contract No. Ilr-733S

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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Contract No. Ilr-733S

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. I1r-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 Spaceholder Contract wherever and to whatever extent the provisions of the Existing Spaceholder Contract are in conflict with the provisions of this Spaceholder Contract. The provisions of the Existing Spaceholder 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 Spaceholder Contract, the United States and the Spaceholder recognize that certain provisions of the Existing Spaceholder Contract may no longer be applicable, and it is the intention of the United States and the Spaceholder to subsequently meet and review the Existing Spaceholder Contract for possible revision.

(b) After execution by the Constructing Agency and Spaceholder, this Spaceholder 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 Spaceholder 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 Spaceholder's relationship with the United States, as it relates to the Existing Dam, shall be governed by the terms and conditions of the Existing Spaceholder Contract, except that the Spaceholder 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 Replacemeent 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 Spaceholder 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 Spaceholder under the provisions of Article 24 hereof.

(2) The Spaceholder agrees that, in addition to its other obligations under this Spaceholder 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 Spaceholder will be and remain liable to make all Spaceholder Payments, when due, required to be made by the Spaceholder hereunder, without regard to any such suspension and as if any suspended rights exercised by another person were exercised by the Spaceholder. 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 Spaceholder for the recovery of damages or for a sum equal to all or any part of any Spaceholder Payments and any other payments required to be made by the Spaceholder pursuant to this Spaceholder Contract, and to recover the same upon the liability of the Spaceholder 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 Spaceholder's rights to the use of the water from the Replacement Dam accruing to the space of the Spaceholder shall be construed as an election on the part of the Constructing Agency, the Trustee, or the Contracting Officer to terminate the Spaceholder's interest in, to and under this Spaceholder Contract unless a notice of intention be given to the Spaceholder 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 Spaceholder of any of the provisions of this Spaceholder Contract, or to exercise any right or remedy provided for in this Spaceholder 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 Spaceholder Bond Payment, receipt by the Contracting Officer of any Spaceholder Replacement Dam Operation and Maintenance Payment, or receipt by the Constructing Agency of any Spaceholder Water Quality Facilities Operation and Maintenance Payment, with knowledge of the breach of any provisions of this Spaceholder Contract, shall not be deemed a waiver of such breach. In addition to all other remedies provided in this Spaceholder 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 Spaceholder Contract, or to a decree concerning performance of any of the provisions of this Spaceholder 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 Spaceholder Contract provide for action to be based upon the opinion or determination of any party to this Spaceholder 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 Spaceholder 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 Spaceholder and shall be conclusive upon the parties.

Water and Air Pollution

34. The Spaceholder 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 Spaceholder to the United States or to the Constructing Agency under this Spaceholder Contract be reduced by reason of such shortages or interruptions.

Changes in Organization of Spaceholder

36. While this Spaceholder Contract is in effect, no change shall be made in the organization of the Spaceholder 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 Spaceholder shall use all the authority and resources of the Spaceholder to meet the obligations of the Spaceholder under the Existing Spaceholder Contract and this Spaceholder Contract.

Assignment Limited—Successors and Assigns Obligated

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

[CONFORMED COPY]

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 Spaceholder 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 Spaceholder. The bank holding the Water Qualities Facilities Operation and Maintenance Fund shall verify payment by the Constructing Agency of its Spaceholder 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 Spaceholders Water Quality Facilities Operation and Maintenance Payments from each Spaceholder, except Idaho Power Company, in accordance with Article 28 of the Spaceholder Contracts. All Spaceholder 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 Spaceholders' 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 Spaceholders' 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 Spaceholder 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 Spaceholder 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 Spaceholders, excluding Idaho Power Company, in accordance with their respective interests. At the termination of the obligation of the Spaceholders 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 Spaceholders, excluding the Idaho Power Company, in accordance with their respective interests.

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.

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 Spaceholders representing ownership of 66⅔% of the total active storage capacity in the Replacement Dam, after 30 days written notice has been given to all Spaceholders, nor shall this Water Quality Facilities Agreement be amended, supplemented, terminated or assigned without the approval of the Secretary.

18. *Spaceholders Third Party Beneficiaries.* The Spaceholders 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 BRIDEGUM
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 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)

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 EE

WATER DISTRIBUTION AND HYDROMETRIC WORK DISTRICT NO. 01 SNAKE RIVER, IDAHO 1978

Disposal of Stored Water

Each year after reservior accounts have achieved the maximum annual fill, the supply is divided among the various space holders. Table 11 shows the space allocations, storage used and carry-over by account for Jackson, Palisades and American Falls Reservoirs. If these data were to be used in crediting carry-over for 1979, additional adjustments would have to be made to correct for rentals, adverse storage use, evaporation and stored flows spilled past Milner. This amounts to 120,800 acre-feet or an average reduction of about 4.8% on each account.

TABLE 11

SPACE ALLOCATIONS, STORAGE USED & CARRY-OVER

Canal	Total Allocation	Storage Used	Water Used in Excess of Allocation	Carry-over
A & B Irrigation	133,363	20,747		112,616
Aberdeen-Springfield	253,927	1,625		252,302
American Falls Res. District #2	400,938	148,742		252,196
Bear Island	272	685	413	0
Blackfoot Irrigation	21,995	2,345		19,650
Burgess Canal	46,765	16,901		29,867
Burley Irrigation	194,712	42,580		152,132
Butler Island	234	584	350	0
Butte & Market Lake	47,925	216		47,709
Clark & Edwards	750	2,950	2,200	0
Clement Brothers (Kennedy)	634	252		382
Corbett Slough	10,750	147		10,603
Craig-Mattson	1,351	348		993
Danskin Ditch	2,204	1,693		511
Dilts Irrigation	2,389	474		1,915
Enterprise Canal	35,602	6,779		28,832
Enterprise Irrigation	14,525	5,535		8,990
Falls Irrigation District	61,664	12,989		48,675
Farmers Friend Irrigation	10,291	8,393		1,898
Harrison Canal	42,872	24,077		18,795
Idaho Irrigation	87,817	17,510		70,307
Idaho Power	45,000	45,000		0
Island Irrigation	4,409	1,881		2,528
LaBelle Irrigating	750	260		490
Lenroot Canal	15,089	2,803		12,286
Lowder Slough	2,268	1,570		698
Martin Canal (Great Western)	9,219	2,545		6,674
Milner Low Lift	87,428	22,032		65,396
Minidoka Irrigation	253,524	69,471		184,053
New Lavaside	11,022	73		10,949
New Sweden	72,026	15,182		56,844

Exhibit FF

WTR-4.10
BOI

IDAHO POWER
An IDACORP Company

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

BUREAU OF RECLAMATION
OFFICIAL FILE COPY
OCT 22 '01

JAMES C. TUCKER
Senior Attorney

TO		
1060		
1050		
1010		
3000		

CONTROL #:
FOLDER #:

October 18, 2001

J. William McDonald
Regional Director
U. S. Bureau of Reclamation
Pacific Northwest Division
P. O. Box 43
1150 N. Curtis Road, Suite 100
Boise, Idaho 83706

cy to SRA-1000
SRA-2000 (Kenyon)
PN-3030
3100
1700

Re: Idaho Power Company water/storage rights – Flow Augmentation

Dear Mr. McDonald:

Idaho is experiencing drought conditions this year and is entering the fall and winter reservoir storage season with low reservoir levels and uncertain precipitation forecasts. As you know, the Idaho Power Company (Company) owns and operates 17 hydroelectric projects on the Snake River and its tributaries downstream from U.S. Bureau of Reclamation (Reclamation) reservoirs, and holds state water rights for hydropower purposes at each of those projects. In this sense, the Company and Reclamation rely upon the same resource to fulfill their respective projects purposes. This common reliance on the Snake River has fostered a symbiotic relationship between the Company and Reclamation premised upon contractual rights and obligations, consistent historic operations and state water law. Drought conditions test such relationships. But this is neither the first nor the worst drought Idaho has experienced and yet the relationship has continued. In part, this has been because of the certainty necessarily built into the relationship by virtue of the contract rights, historic operations and state water law principles that govern it. However, a new variable is developing in the context of Reclamation's upper Snake River operations that necessarily creates uncertainty with regard to Idaho water resource issues which when coupled with the current drought conditions, threatens to undermine our long-standing relationship.

The Company understands that discussions are underway between Reclamation, the State of Idaho, Idaho irrigation interests and the National Marine Fisheries Service (NMFS) in an effort to reach a long-term agreement relative to the use of upper Snake River storage water to augment flows in the lower Snake River. By letter of even date herewith, the Company has requested that it be included in those discussions so that it might protect its interests. A copy of this letter is attached for your reference.

While the Company intends to participate in these upper Snake discussions, in light of the severe drought conditions facing the region it feels compelled to advise Reclamation of certain concerns it has concerning the apparent intent of the United States to use Idaho water to resolve problems created by Federal facilities. These concerns relate to three general areas – certain contract rights the Company has with regard to the American Falls and Cascade reservoirs and the effect of using storage water from Idaho for flow augmentation purposes on the Company's water rights.

As to the latter issue, last year the Company advised Reclamation and Idaho's water managers that the rental of storage water in Idaho for the purpose of augmenting flows in the lower Snake River to mitigate for the impact of the four lower Snake Federal projects on listed anadromous fisheries may injure the Company's state water rights.
The Company's concern in this regard remains. Idaho water law, and particularly the prior appropriation doctrine, governs Reclamation's access to and use of Idaho storage water for flow augmentation purposes. Reclamation neither holds state water rights authorizing the storage of water for flow augmentation purposes nor is flow augmentation either a beneficial use under Idaho law or an authorized Reclamation project purpose.[1] As such, any reservoir space either created by the previous evacuation of water from that space for flow augmentation purposes, or intended to be used for such purposes in future years, is "last to fill" in the sense that all other senior priority water rights on the river, including the Company's, must be satisfied before water can be diverted to storage in that reservoir space.[2] If Reclamation either intends to fill or use reservoir space in the upper Snake for flow augmentation purposes, the Company objects to the extent such use injures the Company's prior natural flow water rights at projects downstream from Reclamation reservoirs.

The issues relating to American Falls and Cascade reservoirs evolve from certain contract rights the Company enjoys at each facility. As such, they will be dealt with separately.

American Falls – On June 15, 1923, the Company and the United States entered into a contract that ultimately led to the development of the American Falls project (U.S. contract Ilr-733). This 1923 contract entitles the Company to the use of 45,000 acre-feet of primary storage capacity

[1] See W/R #s: 65-2927A (Cascade Reservoir) – irrigation & hydropower storage; 65-2927B (Cascade Reservoir) – municipal & industrial storage; 65-2917 (Deadwood Reservoir) – hydropower storage; 65-9483 (Deadwood Reservoir) – irrigation storage; 63-3613 (Arrowrock Reservoir) – irrigation storage; 63-5262 (Arrowrock Reservoir) – irrigation storage; 63-5261 (Anderson Ranch Reservoir) – irrigation & hydropower storage; 63-3614 (Anderson Ranch Reservoir) – irrigation & hydropower storage; 63-3618 (Lucky Peak Reservoir) – irrigation, wildlife & recreation storage; 63-5263 (Lucky Peak Reservoir) – irrigation storage; 01-2064 (American Falls Reservoir) – irrigation & hydropower storage; 01-4052 (American Falls Reservoir) – irrigation & hydropower storage; 01-2068 (Palisades Reservoir) – irrigation & hydropower storage; 01-4056 (Palisades Reservoir) – irrigation & hydropower storage; 01-4057 (Palisades Reservoir) – irrigation & hydropower storage; 21-2156 (Island Park Reservoir) – irrigation & hydropower storage; 21-4156 (Island Park Reservoir) – irrigation & hydropower storage; 21-4157 (Island Park Reservoir) – irrigation storage; 01-4055 (Jackson Lake Reservoir) – irrigation & hydropower storage; and 25-7004 (Ririe Reservoir) – irrigation storage.

[2] Copies of last year's correspondence between Reclamation and the Company with regard to this issue are attached.

and 255,000 acre-feet of secondary storage capacity in American Falls Reservoir. The use of this secondary storage capacity is available to the Company between October 1 of any year and June 10 of the following year and, in combination with the 45,000 acre-feet of primary storage capacity, was granted to the Company for the purpose of regulating and controlling 300,000 acre-feet of water that was reserved to the Company in the contract and which the United States holds in trust for the Company's use. The Company's right to demand the turning out of this water for use below Milner Dam is limited to the 45, 000 acre-feet of primary storage rights and such portion of the 255,000 acre-feet of secondary right as may be necessary to maintain a total flow at the Twin Falls power plant of:

690 cfs from October 1st to November 30th, inclusive
790 cfs from December 1st to January 31st, "
690 cfs from February 1st to February 12th, "
590 cfs from February 13th to April 15th, "
690 cfs from April 16th to June 10th, "

This right to secondary storage is not restricted to water currently stored in the reservoir, but includes water flowing into the reservoir after October 1st and actually storable therein.

Flows at the Twin Falls power plant since October 1st have at times been below the 690 cfs called for in the contract. Therefore, consistent with the 1923 contract, the Company hereby demands that Reclamation release from, or pass through, American Falls Reservoir sufficient water to maintain flows at Twin Falls of 690 cfs through November 30, 2001, 790 cfs from December 1st through January 31st, 2002, 690 cfs from February 1st to February 12th, 2002, 590 cfs from February 13th to April 15th, 2002 and 690 cfs from April 16th to June 10th, 2002. These releases should continue for so long as necessary to maintain the flows at Twin Falls at the stated minimums or until the Company's secondary storage rights under the contract (totaling 255,000 acre-feet) have been exhausted.

Cascade Reservoir – On October 10, 2001, Jerrold D. Gregg of the Snake River Area Reclamation office advised the Company that Reclamation was instructing the Watermaster for Water District 65 to restrict outflows from Cascade Reservoir to the natural flow entering the reservoir. The Company disagrees with Reclamation's interpretation of the 1981 contract referenced in Mr. Gregg's letter and continues to maintain that Reclamation has a contractual obligation to provide continuous flows of 200 cfs to the Company's project below Cascade Dam. Attached is a copy of Mr. Gregg's letter to the Company along with a letter of even date herewith to Mr. Gregg objecting to Reclamation's action and explaining the basis for that objection.

The Company looks forward to continuing to work with Reclamation to resolve the above issues either in the context of the ongoing discussions taking place in the SRBA mediation effort or through direct discussions with Reclamation.

Sincerely,

James C. Tucker

JCT/dkd
cc: Wm. Hogarth/NMFS
D.R. Lohn/NMFS- NW
A. Klee/Interior
J. Mark Robinson/FERC
Jim Yost/Governor's Office
Francis McGovern/SRBA Mediator
All counsel/SRBA Mediation

Exhibit GG

Regarding the Company's concerns with respect to settlement of the Nez Perce Claims, we understand the Company has been in contact with Ms. Ann Klee, Counselor to the Secretary of the Interior, and the Department of Interior's contact on the Nez Perce mediation. We encourage the Company to continue those discussions..

Sincerely,

Kenneth R. Peddle

J. William McDonald
Regional Director

cc: Ms. Ann Klee
Counselor to the Secretary
United States Department of the Interior
1849 C Street, NW
Washington DC 20240-2001

Mr. Bob Lohn
Regional Administrator
National Marine Fisheries Service
7600 Sand Point Way, Building 1
Seattle WA 98115
(ea. w/cy of incoming)

Exhibit HH

January 6, 1973

American Falls Spaceholders

Re: American Falls Spaceholders - Executive Committee

Gentlemen:

The American Falls Spaceholders Executive Committee met on the 6th day of January in Burley to consider a proposal to explore the construction of the American Falls Dam with private financing.

The committee unanimously endorsed the resolution, a copy of which is enclosed. It is the aim of the Executive Committee to bring this resolution up for a vote of all of the Spaceholders at a meeting to be called sometime in the near future after preliminary investigations have been made and a more definitive plan can then be explained.

This resolution is being sent to you in advance of any press releases on the matter. The Executive Committee has authorized a press release which will go out to all newspapers in the State on Tuesday, January 9. We would ask that you not release this information prior to that time.

In the next two weeks, cost estimates will be obtained by the Executive Committee as to what extent the Idaho Power Company will be willing to participate in an arrangement to build a new American Falls Dam with private funds. When those results are known, a meeting of all Spaceholders will be called to discuss the proposal.

C.J. MARSHALL
Chairman - Executive Committee

Executive Committee,
Burley, Idaho, January 6, 1973

RESOLUTION

WHEREAS, the Bureau of Reclamation has announced that American Falls Dam must be replaced and is currently in such a deteriorated condition that storage therein must be reduced by approximately one-third of its total capacity; and

WHEREAS, it has been publicly predicted that replacement of the dam by the Bureau of Reclamation may take nine or ten years, or more; and

WHEREAS, the reservoir spaceholders could suffer severe economic losses if water short years occur before replacement is accomplished; and

WHEREAS, it now appears that the most expeditious replacement of the Dam and facilities can be accomplished with the use of private funds.

NOW, THEREFORE, BE IT RESOLVED that the American Falls Reservoir Spaceholders take immediate steps to study and evaluate all proposals for the construction of a new American Falls Dam with private funds, and specifically the proposal to construct said new dam which would be financed by bonds which would be repaid to the extent possible with revenues from the development of hydro-electric power using the present and expanded facilities and that the Idaho Power Company be contacted for preliminary information; provided that the present proportionate capacity rights of all spaceholders shall be maintained and that irrigation rights shall always have priority in the operation thereof.

Exhibit II

Form No. 11-A

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

Re: 15134 & R-269 Date March 17, 1941.

Gooding Leader
Gooding, Idaho

Dear Sir:

Enclosed you will find notice for publication once a week for four consecutive weeks prior to April 22, 1941., the date set for proof, the expense of the publication to be paid by the applicant,

to whom you should furnish proof of publication on or prior to the date set for proof.

Please acknowledge receipt of this notice and furnish this office with a copy of the first publication.

Very truly yours,

E. V. BERG.

Commissioner of Reclamation

R-269

Form No. 11-A

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

Re: 15134 & R-269

March 17, 1941

Date . . . . . .

Idaho Evening Times
Twin Falls, Idaho

Dear Sir:

Enclosed you will find notice for publication once a week for four consecutive weeks prior to April 22, 1941 ; the date set for proof, the expense of the publication to be paid by the applicant,

S. R. McLean, Project Supt., Reclamation Bureau, Burley, Idaho

to whom you should furnish proof of publication on or prior to the date set for proof.

Please acknowledge receipt of this notice and furnish this office with a copy of the first publication.

Very truly yours,

E. V. BERG.

Commissioner of Reclamation

R-269

Form No. 11-A

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

Re: 15134 & R-269

Date . March 17, 1941. . . . . .

North Side News
Jerome, Idaho

Dear Sir:

Enclosed you will find notice for publication once a week for four consecutive weeks prior to April 22, 1941 , the date set for proof, the expense of the publication to be paid by the applicant,

S. R. Marean, Project Supt., Reclamation Bureau, Burley, Idaho.

to whom you should furnish proof of publication on or prior to the date set for proof.

Please acknowledge receipt of this notice and furnish this office with a copy of the first publication.

Very truly yours,

E. V. BERG.

Commissioner of Reclamation

R-269

Form No. 11

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) March 14, 1941

(P. O.) Burley, Idaho

TO THE COMMISSIONER OF RECLAMATION:

Boise, Idaho.

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the Idaho Evening Times of Twin Falls, Idaho, in Twin Falls County, the North Side News of Jerome, Idaho in Jerome County, and the Gooding Leader of Gooding, Idaho in Gooding County, in which three counties the major portion of the lands irrigated under these permits are situated.

S. O. P. Marean

Project Superintendent, Reclamation Bureau, Burley, Idaho, as agent for the United States, the holder of the permits.

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well-known and competent engineer)

I hereby certify that the facts set forth in the attached notice are true.

Lynn Crandall

Engineer.

R-269

Progressive Irrigation District
Reid Canal Company
Rudy Irrigation Canal Company
Charles D. Smith (individual)
Snake River Valley Irrigation District
Trego Ditch Company
Utah-Idaho Sugar Company

The lands in the Upper Snake River Valley are supplied by means of exchange of water.

The names of the canals or ditches or other works by which said water is conducted to such place of use are:

Aberdeen
Martin
North Side Project
Twin Falls Canal Co
Woodville
Gooding
Blackfoot
Burgess
Butte & Market Lake
Corbett
Dilts
Enterprise Canal Co
Enterprise District
Harrison
Idaho
Lenroot
Milner Low Lift
Minidoka
New Sweden
Peoples
Poplar Irr. Dist.
Progressive Irr. Dist.
Reid
Rudy
Smith
Snake River Valley
Trego
Utah-Idaho Sugar Company

The right to take water from such works is based upon Permits No. R-269 and 15134.

The source of supply from which such water is diverted is Snake River.

The date of priority which said user is prepared to establish is March 30, 1921.

E. V. Berg
Commissioner of Reclamation.

R-269

Notice for Publication

NOTICE OF PROOF APPLICATION OF WATER
TO BENEFICIAL USE

Notice is hereby given that at eleven A. M. on the 22nd day of April, 1941, at Burley, County of Cassia, State of Idaho, before S. H. KUNAU, a notary public, proof will be submitted of the application to beneficial use of 1,800,000 acre-feet per annum, total rate of diversion for storage and direct use being in excess of 9,000 cubic feet per second of the waters of Snake River, in accordance with the terms and conditions of Permits No. 15134 and R-269 heretofore issued by the Commissioner of Reclamation of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are United States of America, address, Superintendent, U. S. Reclamation Bureau, Burley, Idaho.

The use to which said water has been applied is irrigation and domestic use.

The amount applied to beneficial use is 1,800,000 acre-feet per annum, at a total rate of diversion for storage and for direct use in excess of 9,000 second-feet.

The place where said water is used is on the lands in the following irrigation districts and on the lands of the projects of the following irrigation companies:

Aberdeen-Springfield Canal Company
American Falls Reservoir District —
American Falls Reservoir District No. 2 —
Blackfoot Irrigation Company
Burgess Canal & Irrigation Company
Butte & Market Lake Canal Company
Corbett Slough Ditch Company
Dilts Irrigation Company
Enterprise Canal Company
Enterprise Irrigation District
Harrison Canal & Irrigation Company
Hillsdale Irrigation District
Idaho Irrigation District
Lenroot Canal Company
Milner Low Lift Irrigation District
Minidoka Irrigation District
New Sweden Irrigation District
Peoples Canal & Irrigation Company
Poplar Irrigation District

R-269