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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 No.: 01-02064
	)	
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 ten (10) 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 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.

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 are true and correct excerpts from the Rule 30(b)(6) Deposition of Idaho Power Company Testimony of Jon Bowling, dated May 3-4, 2010.

8. I attest that attached as Exhibit E is a true and correct copy of Memorandum – Contracts Between Idaho Power Company and U.S. Bureau of Reclamation for Power at American Falls by B. C. Russell, dated July 14, 1949.

9. I attest that attached as Exhibit F is a true and correct copy of the Memo entitled "American Falls Storage" by H. L. Stoner, dated January 12, 1928.

10. I attest that attached as Exhibit G is a true and correct copy of the Memo from District Counsel B. E. Stoutemyer to the Commissioner of Reclamation, dated November 12, 1926.

11. I attest that attached as Exhibit H is a true and correct copy of the letter from the Vice President & General Manager of Idaho Power Company to Clay C. Boswell of Electric Bond & Share Company, dated October 3, 1927.

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

13. I attest that attached as Exhibit J is a true and correct copy of the letter of District Counsel B. E. Stoutemyer to Chief Counsel, dated March 18, 1921.

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

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

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

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

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

19. I attest that attached as Exhibit P is a true and correct copy of the letter of Idaho Power Company Vice-President and General Manager K. M. Robinson to District Counsel B. E. Stoutemyer, dated November 9, 1933.

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

21. I attest that attached as Exhibit R is are true and correct excerpts from the Upper Snake River Basin – Summary Report – Volume I, by the Bureau of Reclamation and the Corps of Engineers, dated 1961.

22. I attest that attached as Exhibit S is a true and correct copy of the memo from Idaho Power Company General Superintendent B. C. Russell to T. E. Roach in the Idaho Power Company General Office, dated June 4, 1948.

23. I attest that attached as Exhibit T 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).

24. I attest that attached as Exhibit U is a true and correct copy of Contract No. I74r-801, dated December 15, 1950.

25. I attest that attached as Exhibit V is a true and correct copy of the letter from the Regional Director of the Bureau of Reclamation H. T. Nelson to the Chief Engineer and the Superintendent in Burley, dated February 16, 1953.

26. I attest that attached as Exhibit W is a true and correct copy of the letter by Idaho Power Company Superintendent of Power H. R. Moore to Glen Simmons at the Bureau of Reclamation, dated November 10, 1953.

27. I attest that attached as Exhibit X is a true and correct copy of the letter by Watermaster Lynn Crandall to N. V. Sharp, Chairman of the Committee of Nine, dated November 20, 1953.

28. I attest that attached as Exhibit Y is a true and correct copy of the Memorandum by Assistant Regional Counsel Van Uden and BOR Contracts Branch Chief Merrill J. Marts, dated December 4, 1953.

29. I attest that attached as Exhibit Z is a true and correct copy of U.S. Bureau of Reclamation, STATUS REPORT-WORKINGS OF PALISADES WATER SAVINGS AGREEMENT (1968).

30. I attest that attached as Exhibit AA is a true and correct copy of the memorandum entitled "Conference with U.S. Bureau of Reclamation Concerning Secondary Storage Space in American Falls Reservoir" by H. R. Moore of Idaho Power Company, dated November 20, 1953.

31. I attest that attached as Exhibit BB are true and correct copies 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.

32. I attest that attached as Exhibit CC is a true and correct copy of the letter by Idaho Power Company Vice President H. R. Moore to Idaho State Reclamation Engineer R. Keith Higginson, dated November 9, 1967.

33. I attest that attached as Exhibit DD 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.

34. I attest that attached as Exhibit EE 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.

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

36. I attest that attached as Exhibit GG is a true and correct copy of the Executive Summary Report for American Falls Dam Replacement, dated December 1972.

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

38. I attest that attached as Exhibit II is a true and correct copy of the Financial Study of Proposed Completion of American Falls Power Plant by the Bureau of Reclamation, dated June 1949.

39. I attest that attached as Exhibit JJ is a true and correct copy of the Proposed AMERICAN FALLS DAM Replacement Plan as presented by R. A. Hogg of Idaho Power Company on February 27, 1973.

40. I attest that attached as Exhibit KK 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.

41. I attest that attached as Exhibit LL 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.

42. I attest that attached as Exhibit MM is a true and correct copy of Order Issuing Major License (Unconstructed) and Permitting Withdrawal of Intervention for FPC Project No. 2736, issued March 31, 1975.

43. I attest that attached as Exhibit NN is a true and correct copy of the memorandum tracing the evolution of Section 14.2 of the Falling Water Contract.

44. I attest that attached as Exhibit OO is a true and correct copy of Memorandum from the Contract Negotiating Committee to American Falls Dam and Reservoir Spaceholders, dated September 5, 1975.

45. I attest that attached as Exhibit PP is a true and correct copy of the letter by John A. Rosholt to Bill Burpee in the Interior Field Solicitor's Office, dated October 10, 1975.

46. I attest that attached as Exhibit QQ is a true and correct copy of the Memorandum from Commissioner of Reclamation G. G. Stamm to the Secretary of the Interior, dated February 25, 1976.

47. I attest that attached as Exhibit RR is a true and correct copy of the letter by Assistant Regional Director N. H. Moore to John A. Rosholt, dated November 3, 1975.

48. I attest that attached as Exhibit SS is a true and correct copy of the letter by Robert A. Hogg of Idaho Power to Phillip H. Holm of Chapman and Cutler, dated November 18, 1975.

49. I attest that attached as Exhibit TT is a true and correct copy of the memo by John A. Rosholt to representatives of American Falls Spaceholders, dated March 12, 1976.

50. I attest that attached as Exhibit UU is a true and correct copy of DOI Field Solicitor Routing Slip from November 28, 1975 and attached drafts.

51. I attest that attached as Exhibit VV is a true and correct copy of the memorandum from Assistant Regional Director N. H. Moore to the Commissioner of Reclamation, dated January 26, 1976.

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

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

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

55. I attest that attached as Exhibit ZZ is a true and correct copy of the letter from Phillip H. Holm of Chapman and Cutler to Field Solicitor William Burpee, dated October 7, 1975.

56. I attest that attached as Exhibit AAA is a true and correct copy of the Memorandum from Phillip H. Holm of Chapman and Cutler to various representatives of American Falls interested parties, dated November 12, 1975.

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

58. I attest that attached as Exhibit CCC is a true and correct copy of the Spaceholder Contract between the United States and the Aberdeen-Springfield Canal Company, dated March 31, 1976.

59. I attest that attached as Exhibit DDD is a true and correct copy of a Bill for Collection of Idaho Power Company's proportional share of operation and maintenance costs at American Falls Reservoir, dated February 15, 1983.

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

61. I attest that attached as Exhibit FFF is a true and correct copy of Contract No. 14-06-100-9041 ("Government Contract"), dated Mar. 31, 1976.

62. I attest that attached as Exhibit GGG is a true and correct copy of the letter from BOR Regional Supervisor of Power Merrill J. Martz to the Regional Director of Reclamation, Dated Aug. 2, 1977.

63. I attest that attached as Exhibit HHH is a true and correct copy of the e-mail from Jon Bowling of Idaho Power Company to James Tucker of Idaho Power Company, dated October 10, 2001.

64. I attest that attached as Exhibit III is a true and correct copy of the letter from James Tucker of Idaho Power Company to BOR Regional Director J. William McDonald and D. Robert Lohn, Northwest Regional Administrator of the National Marine Fisheries Service, dated October 18, 2001.

65. I attest that attached as Exhibit JJJ is a true and correct copy of the letter from James Tucker of Idaho Power Company to BOR Regional Director J. William McDonald, dated October 18, 2001.

66. I attest that attached as Exhibit KKK 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.

DATED this 4th day of October, 2010.

David A. Jarvis

SUBSCRIBED AND SWORN to before me this 4th day of October, 2010

EILEEN GALL RUTHERFORD NOTARY PUBLIC STATE OF COLORADO
My Commission Expires 8/27/2012

Eileen Gall Rutherford
Notary Public for Colorado
Residing at: Denver Colorado
My Commission Expires: 8/27/2012

Exhibit A

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



U.S. GOVERNMENT PRINTING OFFICE
23-782 WASHINGTON : 1973

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JAMES R. JONES, Oklahoma	WILLIAM M. KETCHUM, California

JIM T. CAREY, *Consultant on Water and Power Resources*
DAVID LOREN, *Minority Consultant*

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.

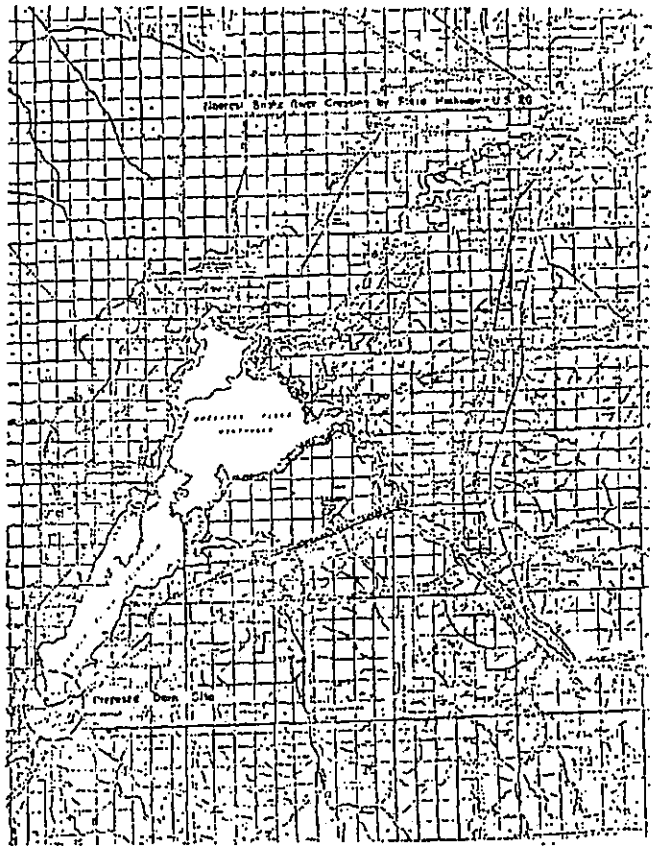
of the critical time as possible. If the construction schedule proposed cannot be met, another, and perhaps a most critical year, could be lost.

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 0, 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 000,000 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 000,000 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 000,000 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 10 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 8 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 140 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 3½ 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 1073-74 winter and spring precipitation is below normal, the 1074 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 1076.

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 1020 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 000,000 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 10 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	$22,000
Penstock future power	1,454
Highway improvement	1,861
Remove old dam	2,100
Permanent operating facilities	149
General service equipment	43
Basic health and safety	88
Fishing mitigation	546
Fish and wildlife enhancement	190
Flood forecasting	131
Total	29,468
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	98	1,323
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	$18,050.0
Fish and wildlife enhancement—non-Federal body	101.5
Power (deferred)	1,548.0
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 870 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 95 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 80% 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 38 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 $19,000,000 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 1,300,000 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 excess 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 490,000 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 8 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 SAXVIK. I can add to that, Mr. Chairman. There is often the tone 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 16 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 84-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 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 263,000 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.

10576

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

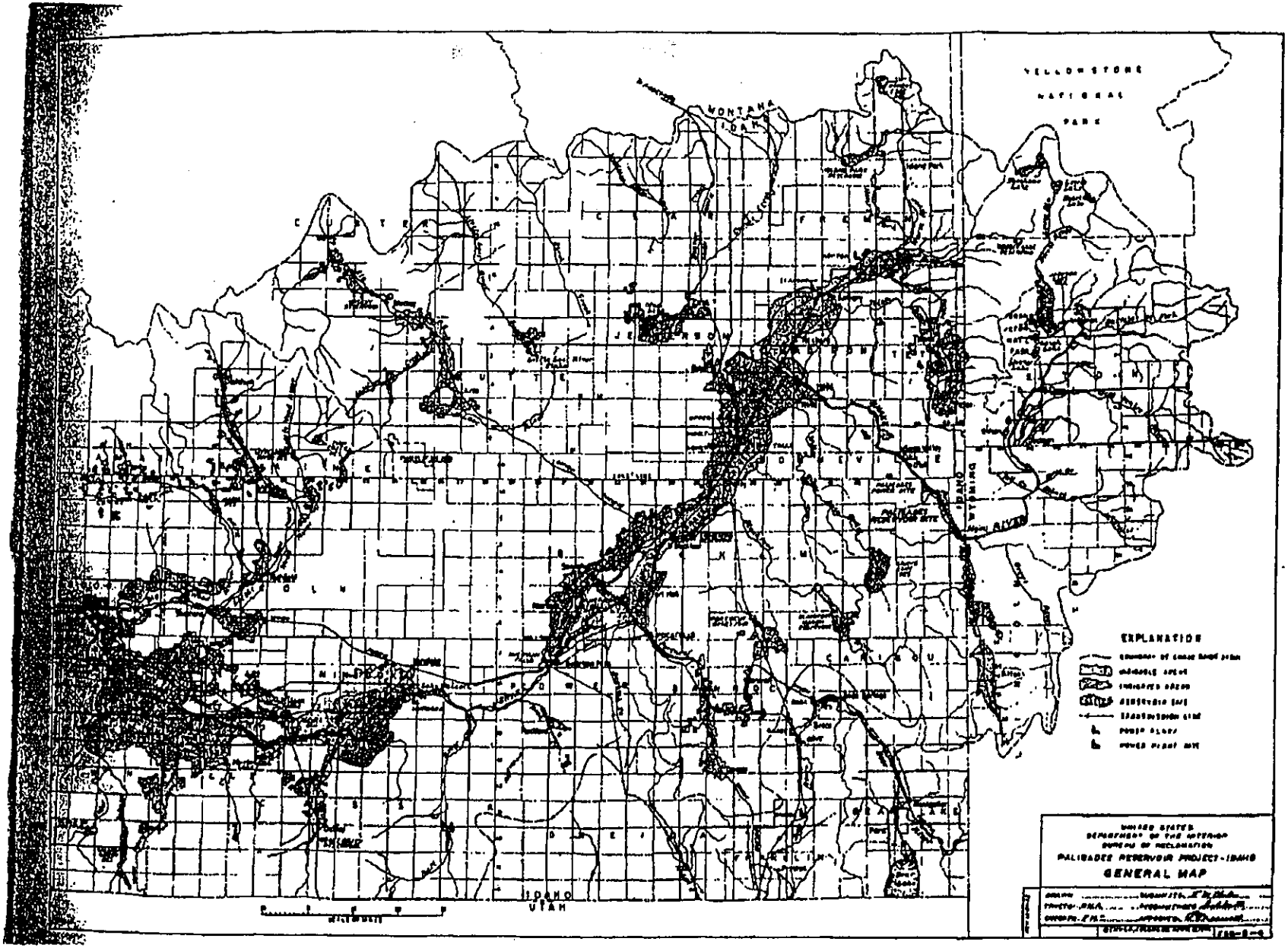
1. Herein is transmitted my report on means of conserving water for irrigation use in the Snake River Valley of Idaho. The conservation measures presented, together with operation of the Palisades Reservoir, previously authorized for construction, will materially increase the water supply available for 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
IDAHO
UTAH
EXPLANATION
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 the potatoes are grown on about 110,000 acres in this area. 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 intermountain 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

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

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

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-

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

deducted from the purchase price.

27. Payments by the United States.

In consideration whereof the United States agrees that it will purchase said property on the terms herein expressed, and upon the signing of the usual Government vouchers therefor and their further approval by the proper Government officials, it will, as full payment for the property, and rights herein agreed to be conveyed to the United States, and for all damages for entry upon the above described property, and the construction, operation and maintenance of Reclamation works under said act, and for all claims by the company for surveys, examinations, opinions of experts, and expenses of whatsoever kind incurred in connection with the consummation of this contract, in addition to the storage capacity rights herein granted to the company, cause to be paid the sum of one million ($1,000,000) Dollars in instalments as hereinafter provided by United States Treasury warrant or fiscal officer's check, which sum shall become due and payable in four equal annual instalments, the first of which will be due and payable after the furnishing of the abstract and other evidence of title herein provided and concurrently with delivery of the deeds to the property described in Paragraph 9 (a), and one instalment on the same day of each year thereafter until the full amount herein specified has been paid. Provided that concurrently with receiving said second instalment the company shall deliver to the United States a deed conveying to the United States all

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. 2 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

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

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

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.

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.

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-

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,

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

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

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-

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 not not to exceed two feet. Such discharge works shall discharge into the pool between the proposed 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

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

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,

(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.

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.

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

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

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

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

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

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:

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

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

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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

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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Symbol IIr-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.

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.

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

IN WITNESS WHEREOF the parties have hereto signed their names the day and year first above written. Said Company acting in pursuance of a resolution of its Board of 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

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
Case No. 39576) (American Falls Power Right)
_____)

VOLUME I
(Pages 1-250)

RULE 30(B)(6) DEPOSITION OF IDAHO POWER COMPANY
TESTIMONY OF JON BOWLING
MAY 3, 2010

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

THE RULE 30(B)(6) DEPOSITION OF IDAHO POWER COMPANY, TESTIMONY OF JON BOWLING, was taken on behalf of the United States at the offices of Idaho Power Company, 1221 West Idaho Street, Boise, Idaho, commencing at 9:10 a.m. on May 3, 2010, before Jeff LaMar, Certified Shorthand Reporter and Notary Public within and for the State of Idaho, in the above-entitled matter.

APPEARANCES:

For The United States:
UNITED STATES DEPARTMENT OF JUSTICE
NATURAL RESOURCES SECTION
ENVIRONMENT AND NATURAL RESOURCES DIVISION
BY MR DAVID W GEHLERT
1961 Stout Street, 8th Floor
Denver, Colorado 80294

For the State of Idaho:
OFFICE OF THE ATTORNEY GENERAL
BY MR DAVID I. STANISH
700 West State Street, 2nd Floor
Post Office Box 83720
Boise, Idaho 83720-0010

///
///

APPEARANCES (Continued)

For IDAHO POWER COMPANY:
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MR. DAVID G. SCOTT
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Denver, Colorado 80202-4432
-and-
IDAHO POWER COMPANY LEGAL DEPARTMENT
BY JAMES C. TUCKER
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Boise, Idaho 83702

For Idaho Ground Water Appropriators and Aberdeen-Springfield Canal Company:
RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED
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For Upper Valley Storage Water Users:
RIGBY, ANDRUS & RIGBY
BY MR. ROBERT H. WOOD
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Rexburg, Idaho 83440

APPEARANCES (Continued)

Also Present:
Matt Howard

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JON BOWLING,
first duly sworn to tell the truth relating to said cause, testified as follows:

EXAMINATION

BY MR. GEHLERT:

Q. Mr. Bowling, my name is David Gehlert. I represent the United States in this matter.

If you could state your name and title for the record.

A. Jon Bowling. I'm an engineering leader with Idaho Power Company.

Q. Thank you.

Now, I know you've been deposed before in a related case, but it never hurts to go over the ground rules for a deposition again.

You do understand that your testimony today applies as if you were giving it in a courtroom?

A. Yes.

Q. Great. We need to make a clear record for this proceeding, and that really involves two things. One of which is you need to answer questions audibly with a "yes" or "no." Head shakes won't work for the record. And let's try

Q. You mentioned flow targets, and the objections talk about meeting specified flows for hydropower use downstream.

Can you identify those flow targets for me in the 1923 contract. I think you'll find them on pages 21 and 22.

A. Okay. They start on line 526 on page 22.

Q. And you mentioned those flows being measured at the Kimberly gauge?

A. At the Kimberly gauge.

Q. Where is that?

A. It's just downstream of the Twin Falls hydro plant, upstream of Shoshone Falls.

Q. You anticipated my question. So the flow targets that you identified are part of paragraph 21. And are those numbers modified by paragraph 22, which talks about the Twin Falls power site? It's on the next page.

A. They are.

Q. And what does paragraph 22 require?

A. Paragraph 22 requires that "Should the company construct a powerplant at Twin Falls, then the flow to be maintained below 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 by 100 second-feet for each period, but nothing herein contained shall be construed as waiving any rights of the United States at Twin Falls" --

THE COURT REPORTER: I need you to keep your voice up. That air-conditioner is kind of loud. Can you give me the last part of that again.

THE WITNESS: Well, I think the contract speaks for itself, but --

MR. GEHLERT: You don't need to read it for my benefit.

THE WITNESS: Okay. Do you need me to read the whole thing again?

THE COURT REPORTER: You don't need to read the whole thing. Start at "nothing herein."

THE WITNESS: "But nothing herein contained shall be construed as waiving any rights of the United States at Twin Falls or any other power site on the Snake River, owned or controlled in whole or in part by the United States."

Q. (BY MR. GEHLERT): Thank you, Mr. Bowling.

So by operation of paragraph 22, the

numbers that you identified starting at line 526 would be reduced by 100 cfs; correct?

A. Correct.

Q. So just to be clear, the 790 would be 690 and so forth?

A. Correct.

Q. Can you look at page 19 of the contract.

A. Okay.

Q. In particular, paragraph 18.

A. Okay.

Q. Is that the secondary storage capacity right which the company is asserting?

A. It is.

Q. And if you'll take a moment to read the paragraph. And can you tell me what the purpose of that secondary storage is.

A. Would you like me to read it to myself or out loud?

Q. You can read it out loud.

A. Okay. "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."

Q. Thank you, Mr. Bowling. I appreciate your patience in reading that. We'll be spending some time talking about what that means so it's important to get it into the record.

A. Okay.

Q. First off, has the company acquired any water pursuant to paragraph 10?

A. We have.

MR. DeVOE: Objection. I think the -- can you restate the question?

Q. (BY MR. GEHLERT): Has the company acquired any water pursuant to paragraph 10?
MR. DeVOE: Paragraph 10 or paragraph 18?
MR. GEHLERT: Well, paragraph 18 makes reference to paragraph 10, "...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."
Q. And my only question is, is there any water that the company has acquired under the last sentence of paragraph 10?
A. I would say yes.
Q. And can you identify that water for me.
A. I think that the company had acquired 300,000 acre-feet of primary and secondary storage capacity.
Q. Just to be clear, so the water you're identifying pursuant to paragraph 10 is the 300,000 acre-feet the company contends was reserved through the 1923 contract?
A. That's correct.
Q. Any additional water?
A. No.
Q. Thank you.

The paragraph talks about the water being for the purpose of regulating and controlling the water reserved to the company.
What does the company interpret "regulating and controlling" to mean?
A. "Regulating and controlling" means that there's water available to fill the primary storage right as well as water available to fill the secondary storage right.
Q. And available in what sense?
A. That if water -- if -- if reservoir fills, there's water available to fulfill contract right for the primary storage, the active storage, and if no irrigation user is using water flowing into the reservoir from October 1 to June 10, that that water then is available to meet the flow targets downstream of Milner.
Q. Okay. Let's just focus on the secondary storage right flow targets for now. I don't want to go into the primary.
A. Okay.
Q. Am I correct in understanding your answer to be that there are effectively two criteria, the reservoir being filled and the water not being used by irrigators?

A. There's a distinction between the primary storage, which is active capacity in the reservoir, and secondary storage, which is storage capacity or water which is delivered downstream but not being stored.
Q. And is filling the reservoir required for Idaho Power to have access to that water?
A. To the primary storage?
Q. To the secondary.
A. No.
Q. The paragraph talks about Idaho Power having reserved water.
Do you know what the source of the reservation was?
A. Are you referring to paragraph 10 or paragraph --
Q. Well, the reservation is actually in paragraph 19.
A. Okay.
Q. But it is referred to in paragraph 18.
A. Okay. Can you repeat the question?
Q. Sure. Just so that we're clear, paragraph 18 at lines 453 and 454 talks about controlling the water reserved to the company.
And my question is, what is the source

of that reservation?
MR. DeVOE: I'm just going to interpose a standing objection here that the line of questioning calls for legal conclusions. And I think Mr. Bowling has stated a couple of times that the contract speaks for itself. But I just want to make clear for the record that we continue to go over information where the contract speaks for itself.
MR. GEHLERT: Sure. And my interest is not in getting Mr. Bowling's legal interpretations, but just in finding out what the company's position is.
THE WITNESS: Okay. Well, can you repeat the question one more time?
Q. (BY MR. GEHLERT): Certainly. I'm happy to do that at any point.
Lines 453 and 454 refer to "...regulating and controlling the water reserved to the company under paragraph 19."
And what is the source of that reservation?
A. The source of that reservation?
Q. The source of water that was reserved.
A. Water flowing into American Falls

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Q. When you say "plotted up," can you elaborate.
A. I just plotted Snake River near Kimberly data, and superimposed the target schedule on those. I haven't done any analysis, other than those graphs.
Q. So you've just looked at on a raw basis whether the water was there or not, and didn't factor in the other criteria, the contract we've been talking about?
A. Nothing else. Just comparing the flows to the flow schedule.
Q. And for what years did you do that?
A. 1950 through 2007.
Q. And what were the results?
A. There were a lot of lines on the paper.
Q. I don't want to get too picky here, but I have to ask you to clarify that a little bit.
A. Well, the results were that there -- and I didn't look at each individual year. It was like a spaghetti chart. There was a lot of lines on the paper, and certain -- a lot of them were obviously above the target and there were a lot

that were below the target.
Q. And that's what I wanted to get. So there were some years that were above and some years that were below?
A. That's right.
Q. Any sense of the proportion of those years?
A. I don't have a sense.
Q. But you'd say that there were a significant number that were both above and a significant number below? It wasn't lopsided in one way or the other?
A. Correct.
Q. You mentioned previously about the water in the secondary storage right not being needed by irrigators. Let's take a look at the contract language to that effect. If you could turn to page 19 of the 1923 contract.
A. Page 19?
Q. Yes.
A. Okay.
Q. I'll ask you another question about paragraph 18.
A. Okay.
Q. And particularly lines 457 through

459, which states, in essence, that the company has a secondary right not to exceed 255,000 acre-feet, and now I'll quote, "...when such capacity is not then required and not being used by the owners of the irrigation right to the use of such capacity." Now I want to talk a little bit about the phrase "not then required and not being used."
Is the company's position that that phrase is conjunctive in the sense that there were two separate requirements, the water must be not then required and also not then being used?
A. I think that's correct. I think the contract speaks for itself. It says, "...and not being used."
Q. What does it mean for water to be required by the irrigators?
A. I think it means that an irrigator needs that water.
Q. Irrigator needs that water for the coming irrigation season at that particular time?
A. I don't -- I don't know for sure what that means. Again, I don't know what that meant in 1923. And that -- that's my position on that.
Q. Sure. And I'm not asking you to tell

me what the parties intended in 1923. I'm interested in what Idaho Power's position is today on when water is required by irrigators.
A. Well, I think that that means that they are using the water for irrigation.
Q. So "required" is, then, the same as "being used"?
A. That seems to be what the sentence says.
MR. TUCKER: Counsel, can I ask a question. Are you still referring to the lines 457 through 460? Is that about where you are? Because I'm confused --
MR. GEHLERT: Yes.
MR. TUCKER: -- because you're talking about water and this talks about capacity. I don't know exactly what lines you're referring to.
MR. GEHLERT: Thank you, Mr. Tucker. I should clarify.
Q. Mr. Tucker brought up a useful point that the contract is phrased in terms of capacity.
A. Capacity.
Q. And I've been asking you about water.
Is it the company's position that those are two distinct things?

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A. I think that they're not. I think that capacity and water, there's a distinction between the two.
Q. And that distinction is?
A. Water is -- can be used several ways, and capacity can be used several ways. I guess I can't articulate that.
Q. Would it be fair to say that the capacity is used to hold water?
A. Capacity is used to hold the water? I think that's fair.
Q. So what is the company's position on when capacity is required by irrigators?
A. Well, you know, it's really the company's position that irrigation comes before hydropower. And if an irrigator is using that water or needs that capacity, then it's never been the company's position to try to circumvent that or usurp that.
And I think historically in the past we've had a pretty good cooperation with the irrigators. Even starting in 1923 with the contract, there were times when the company did forego delivery of that water so that the irrigators could use it.

In 1934 we signed another contract with the Bureau, and it was an energy exchange contract to allow that water, the secondary storage, to be stored in American Falls because we were in a drought period. So that was another time that we cooperated with the irrigation.
And I think all along we've always contended through the history of the American Falls project that irrigation was the highest priority. The project was built for irrigation, and that was a high priority. And this was a contract right that we had. And like any spaceholder, we would like to protect our contract right.
I'm not sure in 1923 -- and there's nobody in the company that's sure what the 1923 contract meant exactly. There's varying opinions on that, and there have been varying opinions over the years.
But I think the company believes that we have this right. It's a contract right. We are just trying to protect our rights, just like any spaceholder would do. Even if you don't fully understand it, we're obligated to our shareholders and customers to do that.

So I think, back to your question, we do believe that irrigators come first, when that water is not needed for irrigation. But I think that based on this '23 contract and the language that's in here, the company does have a contract right for certain stored water and certain secondary storage capacity.
Q. Fair enough. We talked about how the contract's provision regarding secondary storage capacity goes from October 1st through June 10th, subject to the limitations of the reservoir filling and what I'll call the April 1 clause.
Let's take a hypothetical. It's November 1st. How do you know what storage capacity is required by an irrigator at that point?
MR. DeVOE: Objection. Assumes facts not in evidence. And if we're going to have a line of questions with hypotheticals, I'll just make it a standing objection.
MR. GEHLERT: That's fine.
THE WITNESS: The short answer is we don't know. I don't know. In my original deposition I said I don't understand fully how water is distributed in the Upper Snake. I'm not sure

anybody really does.
You know, I think that -- I don't understand how the Bureau's operations affect spaceholders and storage. It's something that we are attempting to study now. We have a cooperative effort going on with the Bureau, the State of Idaho where we're going to look at some of those things and try to model some scenarios that try to give us a handle on what that means.
But right now I don't know. I don't know how Bureau operations, how Bureau storage in various reservoirs, how Bureau releases for various things, such as flood control, irrigation, power generation, how those affect spaceholder storage.
Q. (BY MR. GEHLERT): Okay. And we will talk about some of those issues later today. But am I correct in understanding that Idaho Power's position is that on November 1st you cannot determine what water is required for irrigation use or what capacity is required for irrigation use?
A. You -- I don't think you can. And it's -- it's -- we do forecasting to try to understand that and to know. Every year is

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it, we contact Water District 1, and they give us the fine details on when and how much water may be available and for how long.

Q. Okay. When you say "when we're getting pretty close to using it," meaning that we're contemplating that we will ask for this water, or you're already using it at that point?

A. Well, we may already be using it at that point.

Q. And how do you initiate the use of it? Do you contact Water District 1?

A. We contact Water District 1 and ask them to release water from our primary storage. Typically that happens as soon as irrigation starts and the flow at Milner goes to zero.

Q. And I'm aware that at the end of the season the water district produces what they call the Black Book that shows how much water was allocated to each contract right up and down their territory.

Is there other evidence or records of delivery of water?

A. I think recently we've been tracking water deliveries for -- as part of our stream-flow forecasting for Bureau releases for flow

augmentation, Idaho Power Company releases. And so I think that in the last few years we've been paying particular attention to that. I know IDWR, aside from Water District 1 and the Boise office, also tracks flow augmentation releases. And they share that information with us.

The company tracks all flows in the river on a daily basis and reservoir storage. And we use that information in our stream-flow forecasting to try to attempt to figure out what's going to happen next.

Q. Sure. And how long has the company been doing that?

A. Stream-flow forecasting?

Q. No. Tracking.

A. Well, probably for 25 years, that I know of.

Q. So the company has been -- well, does that tracking include releases under the contracts?

A. I'm not sure if it does. I know what we do is we track river flows. I don't know if there's a specific notation that says "This is related to secondary storage," other than an example of the handout I gave you this morning.

Q. The 1969?

A. 1969, to show that here's the target and an estimated flow target past Milner. I don't see anything on there that -- I mean it is what it is, and it says what it says. I can't draw any conclusions from it other than at face value.

Q. Okay. And that's fair enough. If I recall right, you told Mr. Prouty that in the late '90s you began tracking releases under the contracts?

A. That's correct.

Q. And what was the occasion for that?

A. Well, the occasion was discovering that there was a secondary storage. And I had not known that. The company obviously knew that. I think that our attorneys knew that in the water-right claims that they filed prior to my responsibilities in this area. And so that's what precipitated that.

Q. Is there any documentary evidence of the company's tracking contract deliveries between this 1969 spreadsheet, if you will --

And why don't we have this marked. Are we up to 11 now?

THE COURT REPORTER: We are.

MR. GEHLERT: Great.

(Exhibit 11 marked.)

THE WITNESS: Okay. I don't believe that I found anything indicating that we had specifically tracked the flows in direct relation to the secondary storage contract.

Now, in 1977, after American Falls was constructed and the company signed the contract -- and you saw some of the memos that company officials thought that the secondary storage right was intact, as did the Bureau -- after that date in 1977 many of you probably recall the company was sued by ratepayers for -- and accused of not protecting our water rights.

That culminated in the Swan Falls lawsuit. And we were fairly busy at that time. And that was -- it was a big deal. I wasn't involved in it. I didn't work for the company. I don't think anybody that is with the company now that worked on that is necessarily still here.

But I think part of the issue was that there were a lot of things going on in the water world then. And we were preoccupied with Swan Falls. I think a lot of energy went into that.

And it may be that the company had

sufficient resources for flows during most of the year, according to the 1923 contract and the secondary storage, that they just didn't track it. And that's speculation on my part, but I would imagine that there was just an awful lot going on. Most of the records were relating to Swan Falls and flows and related to the Snake River near Murphy.

Q. (BY MR. GEHLERT): Weren't the late 1970s a relatively dry period?

A. 1977 was a relatively dry period. And I believe that there were some other dry years in there. And I think there were some fairly normal years.

Q. Do you know, did the company ever request water under the secondary storage capacity during that period?

A. I don't know if the company requested water. A lot of information that I saw indicated that a lot of our dealings with the Bureau of Reclamation were handled by telephone call. And so I don't know that they didn't, but I don't know that they did.

Q. Suffice it to say that there's no written record of any request?

A. I haven't found a written record of the request.

Q. When you say "I haven't found," I take it that means you've looked?

A. I guess you could say there is none, that I've found.

Q. When you began tracking -- or were you tracking both water rights and the contract rights? I'm just trying to sort out --

A. When I started tracking?

Q. Yes.

A. I was tracking specifically flow targets at the Snake River near Kimberly. And that culminated in the company writing a letter to the Bureau requesting that those flow targets be met under the 1923 contract.

Q. Okay. And just to reiterate, because I'm not sure I asked this question, you're unaware of any tracking of contract obligations between 1969 and the time you started doing it in 1998?

A. I'm unaware of them.

Q. And have you looked?

A. I've looked in plenty of places. But, you know, there's some records that may be at each plant. Back in the early days, they wrote down --

handwrote down flows. They measured a flow at a gauge and wrote it down.

And I suspect that a lot of these documents, like this one from 1969, were probably created by somebody at the Twin Falls or Shoshone Falls plant.

It wasn't until the advent of computers, sophisticated computers, that we were able to start tracking flows on a daily basis with any reliability.

Q. And roughly when was that?

A. Probably in the early '90s.

Q. And Roger Fuhrman is your boss; correct?

A. He is.

Q. And I understand from his testimony that the company began a program of installing gauges roughly around that time in the early '90s; is that correct?

A. That's correct.

Q. And that prior to that time there were only two gauges that provided realtime information?

A. That could be correct.

Q. I mean any reason to disagree with it?

I realize you weren't in the deposition. But is there any --

A. Right.

Q. -- reason to doubt Mr. Fuhrman on that?

A. That could be true.

Q. Mr. Fuhrman explained that the gauge program was developed to assist in FERC compliance.

Any reason to dispute that?

A. I have no reason to dispute that.

Q. This morning you talked about the coordination with Reclamation.

A. Right.

Q. And is that directly part of your job, or do people who work for you do that coordination, or both?

A. I participate in some of that, and people that work for me -- for as far as operations and how that -- those operations affect flows in the river and our stream flows and our generation, the people in my group have conversations with the Bureau.

Q. And would I be correct in assuming that those conversations largely go to asking the

Bureau how they plan to operate, how much water they're going to release out of their facilities, things like that?
A. That's correct.
Q. What is your understanding of Reclamation's obligations -- or operations in terms of their relative obligations?
A. In terms of?
Q. Their relative obligations.
A. Well, I have kind of a limited understanding. I think in my federal deposition I stated that I don't really understand how the Bureau operates above Milner. I don't understand how Water District 1 accounts for the water.
I know it's a complicated system. They distribute water from certain reservoirs to other reservoirs, swap water back and forth. And it's something that I just don't understand. I don't think anybody in the company has ever really understood what they do.
That's probably why we have such a difficult time trying to figure out what they're going to do and why we spend so much time in communication with them on their operations.
Q. Is there anybody at the company who

understands those operations better than you do?
A. I think there are people that understand those operations probably as well as I do.
Q. And who would those people be?
A. I think Pam Pace that works for me, she has a lot of conversations with the Bureau. So she's in -- not maybe day-to-day contact, but at least twice-weekly contact with the Bureau in talking about their operations.
We have a stream-flow forecast model that we use that generally describes Bureau operations based on historical operations. But it is a model. It's calibrated, and its predictability is about as good as any other predictability for a future unknown.
Q. How is it calibrated?
A. It's calibrated based on historical information from 1950 through 2004.
Q. Historical information in what form?
A. Snowpack, precipitation, reservoir operations, releases, irrigation diversions, those sort of things.
But I might add that the Upper Snake -- we're fine-tuning the calibration of the

model below Milner, and we haven't even gotten to the Upper Snake portion yet because it's the most complicated, it has the most unknown to us, and we are in such direct communication with the Bureau that it will probably be the last part of this model that gets fine-tuned in its calibration, because so much depends on what the Bureau does and what they tell us they're going to do, that we rely on that.
And we -- right now we hand-construct a forecast for above Milner based on the conversations we have with the Bureau and historical operations.
Q. So for instance, you might call and say "Are you going to release flow augmentation water this year? If so, when? how much?" questions like that?
A. Right. We talk with canal companies and the Bureau about when water will be turned out in the canals. It's -- there's an awful lot of legwork that we have to do to put together a forecast, especially in the spring when things are changing and irrigation is coming on.
Q. If I use the term "spill," what does that mean to you?

A. "Spill" means water that flows over the dam and not through it.
Q. Okay. And is "spill" used in connection with the powerplant?
A. It is. If you're -- if you have an issue with your generators and you can't generate, then water typically spills if your reservoir is full.
If you're at your maximum hydraulic capacity, say during the spring, then anything in excess of your hydraulic capacity is spill.
Q. Is it fair to say relative to the powerplant that spill is water that's not generating power?
A. That's fair.
Q. Is it fair to say that Idaho Power would like to see Reclamation operate the project to minimize spills at the powerplant?
A. It's fair to say that.
Q. Any advice on how to do that?
A. Well, I think that the group that's been formed to talk about those kind of things and look at the operations is going to address those questions. And I think that it's a -- I think that the State and the Bureau and Idaho Power and

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MR. GEHLERT: And the other one is deposition of Mr. Hogg, dated August 29, 1978, from the Federal Court case of Kerner versus United States. And we have pages 185 through 187 of that transcript. Can we have that marked as No. 13.

(Exhibit 13 marked.)

Q. (BY MR. GEHLERT): Any other internal correspondence or memoranda or records?

MR. DeVOE: Yeah, and we -- stay on or off the record. It makes no difference to me. We'll do the same that we're going to do for the tracking documents.

MR. GEHLERT: Great.

MR. DeVOE: And disclose these with an index so that you can see the correspondence we've located.

MR. GEHLERT: Okay. Fantastic.

Q. And the same thing for any documents or records requesting deliveries under the contract. Good.

Speaking of deliveries or requesting deliveries under the contract, that brings us to Mr. Tucker's letter from 2001, which you have referred to earlier.

We'll mark this as No. 14.

(Exhibit 14 marked.)

Q. (BY MR. GEHLERT): Let's start with a little context.

2001, was that a wet year? average year? dry year?

A. Fairly dry year.

Q. And was that the beginning of a several-year period of dry to very dry years?

A. I would say yes.

Q. And can you identify that period?

A. Well, 2001 through present, actually. There's been two years that were close to normal.

Q. And when you say "2001," are you talking about water year 2001 or calendar year 2001?

A. We're talking about water year 2001.

Q. And just for the record, so we all understand what we mean by "water year 2001," can you provide the dates.

A. A water year is measured from October 1 through the following September.

Q. So water year 2001 would be October 1, 2000?

A. 2000.

Q. Great. How does this present period of water shortage compare to past periods?

A. It's a -- it's one of the longer dry periods we've had, but it's not the lowest dry period that we've had.

Q. Would the lowest dry period be during the '30s?

A. I would assume that's correct, on record.

Q. Right. How far back do the records go?

A. I don't know.

Q. Okay. Any other noteworthy periods of drought between the '30s and the present?

A. '70s. '77 was a record low year, 1992. There was a few years in the '90s that were fairly low. But then some of the highest years on record were also in the '90s.

Q. And you mentioned a contract that Idaho Power entered into in 1934.

A. Yes.

Q. What was the purpose of that contract?

A. The purpose of the contract was to conserve water in American Falls Reservoir to free up our secondary storage to be stored in American

Falls for irrigation purposes and exchange for the energy that would have been generated with that from another Bureau project.

Q. If I remember right, they brought energy in from the Payette system, didn't they?

A. I think it was Black Canyon.

Q. So the purpose of the 1934 contract was, to put it succinctly, to increase the amount of water that would be stored?

A. That's correct.

Q. And is it fair to say that there was a need to increase the amount of water being stored because there were shortages?

A. I don't know that for a fact. But I'm assuming that's what the water users thought at the time.

Q. And I'm sorry, I digressed from Mr. Tucker's letter.

Were you involved in the preparation of this letter?

A. I was not.

Q. Did you have any knowledge of the letter at the time?

A. I had knowledge of the letter after it was sent.

Q. And how soon after it was sent?
A. I don't know.
Q. I mean relatively soon?
A. Probably relatively soon.
Q. Makes sense that somebody might have told you, "Maybe if we send a letter asking for water, there's a possibility that we'll get some," something like that? Is that kind of the nature of the conversation?
A. I don't know. It may have just been forwarded to me in an e-mail as an FYI.
Q. Do you know what motivated Idaho Power to send that letter?
A. The fact that we didn't believe we were getting water delivered according to our 1923 contract.
Q. You'll have to excuse me for a second. Have I already had this marked, the 2001 letter?
MR. DeVOE: No.
MR. WOOD: 14.
MR. SCOTT: 14.
THE COURT REPORTER: This is 14.
MR. GEHLERT: Okay. It is.
MR. DeVOE: My apologies.

MR. GEHLERT: No worries. I just wanted to make sure it's an exhibit. So we're talking about Exhibit 14.
Q. And you indicated why Idaho Power sent the letter.
A. Idaho Power sent the letter to request that the Bureau operate their projects to fulfill the requirements under the 1923 contract.
Q. And what's the basis for your statement?
A. The fact that the letter was sent.
Q. Have you talked to anybody about why the letter was sent?
A. I think after the letter was sent, I did talk to Jim about it, but I don't recall our exact conversation.
MR. DeVOE: And I'll object to any further questions on privilege grounds.
Q. (BY MR. GEHLERT): And I'm certainly not asking you to repeat what Mr. Tucker told you in the way of legal advice.
A. And it was nine years ago, so I don't recollect.
Q. Does the letter mention issues beyond the secondary storage capacity?

A. It talks about Cascade Reservoir.
Q. Does it mention flow augmentation? And if you want to take a minute to read it, please do.
A. Yeah, let me review it.
(Reviews.)
Okay.
Q. Does the letter talk about flow augmentation?
A. It does.
Q. Was that a significant question or issue for Idaho Power Company at the time?
A. I think that it was.
Q. In what way?
A. I think Idaho Power was concerned with other spaceholders and that flow augmentation would impact its rights under its spaceholder contract.
Q. And how would that be?
A. I think that it was water that -- I think the letter kind of speaks for itself from our legal department. I could read that passage for you. That's my understanding of it, the extent of my understanding of it.
Q. Okay. I assume Mr. Tucker could speak

more to the contents.
But is there anybody else in the company who can?
A. I think Jim is probably the likely person.
Q. All right. And what was the result of this letter? Did Reclamation provide water under the secondary storage?
A. No.
Q. And in fact, for purposes of the record, Mr. Tucker wrote a second letter in 2007; is that correct?
A. That's correct.
Q. Let's mark that. And you don't need to take the time to read it. I'm not going to ask you any questions --
A. Okay.
Q. -- beyond the fact that it essentially says "You didn't release water when we asked you for it."
Is that a fair summation?
And can I have this marked as No. 15.
(Exhibit 15 marked.)
Q. (BY MR. GEHLERT): I want to talk a little bit about water year 2002, because although

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other water users have an interest in that, in that if you can use water to its maximum beneficial use for all designated uses and not just spill water through the system that more would benefit.

Q. Does the company agree that Reclamation should attempt to maximize the quantity of water that's stored?

A. If that water is needed for irrigation and there can be reasonable assurance that a fill-and-spill operation that wastes water can be avoided, I think that those two things go hand in hand.

Q. How about when we're outside of the irrigation season?

A. Should water be stored for the maximum benefit of irrigation?

Q. No. Should Reclamation operate the dams to maximize the amount of water that's stored during the nonirrigation season?

A. I think Reclamation should operate the projects to store water so that they can fulfill their spaceholder contracts.

Q. From that response am I correct in assuming that that's not necessarily maximizing

the amount of storage?

A. It may or may not be. I guess that really depends on how the Bureau chooses to operate their projects.

Q. Can you give me a situation where it would not be maximizing storage?

MR. DeVOE: Objection. Assumes facts not in evidence.

THE WITNESS: I can't.

Q. (BY MR. GEHLERT): Would it be the case if Reclamation simply shut the gates at the end of the irrigation season for the whole winter -- and I recognize that that's not the practice and not feasible, given environmental concerns and all that -- but would that be the practice that would maximize the probability that you would capture all of the available storage?

MR. DeVOE: Same objection.

THE WITNESS: If the gates were slammed shut and there's no other exit for water, all of the water that flowed in the reservoir would be captured. It's just a simple physical fact.

Q. (BY MR. GEHLERT): Sure. And it follows from that that to the extent that you open the gates during what I'll call the storage season

that you increase the risk that you'll wind up with less storage at the end of the season?

MR. DeVOE: Same objection.

THE WITNESS: I think that the Bureau probably needs to operate their projects to fulfill their contracts with the spaceholder, and that includes Idaho Power Company.

Now, whether the Bureau operates to maximize fill or not, I think they have other issues with flood control and minimum flows for conservation flows. And so how they choose to operate their system to meet all their requirements is up to the Bureau.

We don't operate the projects above Milner. We don't completely understand how they operate the projects above Milner.

Q. (BY MR. GEHLERT): Fair enough. But I was asking you a much simpler question. It seems to me that as a matter of logic that to the extent that you're releasing or letting water go through the reservoir during the storage season that otherwise could be stored, you're increasing the risk that you will have less storage at the end of the season?

A. Well, I think it depends on other

factors, too, like carryover storage, how much carryover is in the system, as to whether they would just slam the gates shut if they have a full pool.

But if the ultimate goal is to fill the reservoir at all costs, and regardless of whether that water is spilled or used to its maximum beneficial use, then slamming the gates would certainly improve the probability that the reservoir would completely fill.

Q. Sure. And the converse of that is opening them creates some level of risk?

MR. DeVOE: Objection. Asked and answered.

MR. GEHLERT: It's a simple yes-or-no question.

THE WITNESS: If water is not -- if water's not being stored in the reservoir, then it increases probability that the reservoir may not fill, but it doesn't necessarily guarantee that the reservoir will not fill.

Q. (BY MR. GEHLERT): Understood. Thank you.

You mentioned Exhibit No. 11 as a time when the company was tracking compliance with the secondary storage capacity provisions of the '23

we've talked about was October 1 through June 10?
A. That's my understanding.
Q. Right. And the reservoirs didn't fill, so we're not talking about a year where it shut off earlier; correct?
A. Correct.
Q. Okay. In order to be considered a shortage under the terms of the contract, that 71,000 acre-feet of water -- and I'll just use a round number -- this morning you testified that that had to be storable in the reservoir?
A. It's water that would be storable.
Q. Would be storable. So am I correct in understanding, then, that had the Bureau operated the project to honor the contract, as you put it, it would have passed through roughly 71,000 acre-feet of additional water during that October 1 through June 10 period; correct?
A. I think that's what Dave Shaw indicated in his expert witness report.
Q. And does Dave Shaw speak for the company on that point?
A. He was hired by the company.
Q. If the company has a different view of what was required under the contract in water year

2002 -- or I should ask you.
Does the company today have a different view than what was espoused under Mr. Shaw's report?
A. I don't believe so.
Q. And I'm sure your counsel will let me know if that changes.
MR. DeVOE: Of course.
Q. (BY MR. GEHLERT): And my question for you is, where would that 71,000 acre-feet of water have come from?
A. It would have come from natural flow, could have come from reach gains, could have come from pass through of secondary storage capacity at American Falls.
Q. You're talking about sources of water that are available at Twin Falls, it sounds like?
A. Right.
Q. Okay.
A. But I guess my point is is that it could have been -- the hydrology could have been different than it was. So other things could have happened that would have provided different flows. But if this information as depicted here is used in your argument, then the water would likely have

come from a pass-through at American Falls.
Q. Right. And the essence of the operation of the pass-through is that 71,000 acre-feet of water that could have been stored and wasn't?
MR. DeVOE: Objection. Asked and answered.
Q. (BY MR. GEHLERT): It's a simple yes-or-no question.
A. I'd say yes.
Q. And the end result of that is there's 71,000 acre-feet less water available for allocation under all the contracts, including Idaho Power's primary storage contract; correct?
A. Correct.
MR. GEHLERT: Thank you. Why don't we take a break. I think I'm done, but I want to spend a minute.
MR. DeVOE: Okay.
(Recess.)
Q. (BY MR. GEHLERT): We were talking about contract allocations in a very loose sense.
I take it Idaho Power is well aware that there are other entities that hold contracts for water at American Falls?
A. I agree.

Q. And those companies are predominantly or perhaps exclusively irrigation companies?
A. That makes sense.
Q. This morning you were talking with me about how the company views irrigation as coming first. And if you want to elaborate or put a more fine description on that, feel free. But what I was interested in is how that plays out in terms of contract allocations.
And is it the company's position that irrigators are entitled to allocation under their contracts before the company can obtain water through the secondary storage capacity provision?
MR. DeVOE: Objection. Calls for a legal conclusion.
MR. GEHLERT: And I'm just asking for the company's position.
THE WITNESS: Can you repeat that, please?
Q. (BY MR. GEHLERT): Certainly. And I'll attempt to repeat it.
Is it the company's position that the irrigators are entitled to their full contract allocation prior to the company obtaining water through the secondary storage capacity provisions of the 1923 contract?

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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 Nos. 01-02064
Case No. 39576) (American Falls Power Right)
_____)

VOLUME II
(Pages 251-339)

CONTINUED RULE 30(B)(6) DEPOSITION OF IDAHO POWER COMPANY, TESTIMONY OF JON BOWLING
MAY 4, 2010

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

THE RULE 30(B)(6) DEPOSITION OF IDAHO POWER COMPANY, TESTIMONY OF JON BOWLING, was taken on behalf of the United States at the offices of Idaho Power Company, 1221 West Idaho Street, Boise, Idaho, commencing at 8:35 a.m. on May 4, 2010, before Jeff LaMar, Certified Shorthand Reporter and Notary Public within and for the State of Idaho, in the above-entitled matter.

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availability of recharge in the CAMP process?
A. The --
MR. DeVOE: Objection. Calls for speculation.
THE WITNESS: The company has agreed to -- in the Swan Falls reaffirmation to cooperate in the CAMP process to provide a certain amount of water for recharge. I don't know exactly how that would affect recharge.
The amount of recharge that can be recharged to -- the water diverted each year for recharge varies. So it's not just based on flow in the river. It's based on a number of factors. So I can't answer that definitively.
Q. (BY MR. STANISH): Okay. But you envision the possibility that those secondary storage flows would be available for recharge projects?
A. I think that with discussion in the CAMP and with agreement by all parties, that is a possibility.
MR. STANISH: Okay. That's all I have, Jon.
THE WITNESS: Okay.
MR. STANISH: Thank you.

EXAMINATION
BY MS. McHUGH:
Q. Good morning, Mr. Bowling. My name is Candice McHugh, and I represent Aberdeen-Springfield Canal Company -- my law firm does -- and the Idaho Ground Water Appropriators and its ground water district members.
A. Okay.
Q. And I just have some questions that I need to have some clarification on.
A. Okay.
Q. And we'll try hard not to replow ground.
First of all, do you understand what my clients' interests are in this proceeding?
A. I think I understand -- I understand what the interest of your clients would be related to surface water for surface water users.
Q. And as far as my clients that are ground water users and junior ground water users to surface users, do you understand what their interests would be?
A. I do not.
Q. Do you understand that junior ground water users are currently subject to providing

mitigation water to senior surface water users in the event of a finding of material injury by the director?
A. I do understand that.
Q. And do you know where we obtain the mitigation water?
A. I believe that it's from storage.
Q. Okay. And as for the surface water interests that our firm represents, explain to me what you think their interests are.
A. Well, I think Aberdeen-Springfield may have storage space in American Falls Reservoir.
Q. Okay. And is it your understanding that they believe that the secondary storage could affect their storage space?
A. I have no knowledge of that.
Q. Have you ever discussed that with anybody?
A. I have not.
Q. Now, I've heard a question asked several times here yesterday, and I'm not entirely sure I understand your answer. So I want to kind of just kind of make sure I'm clear on where you're at.
Does the company agree that the

primary purpose for the Bureau of Reclamation storage reservoirs is for agricultural and irrigation purposes?
MR. DeVOE: Objection. Asked and answered.
THE WITNESS: I think we did discuss that in quite a bit of detail yesterday. But I think the company believes that irrigation is important, and we support irrigation needs being met as long as they're being met according to the prior-appropriation doctrine.
And I think we have demonstrated that we're cooperative with irrigators and we're willing to work with irrigators to ensure that irrigators have an adequate supply of water for their needs.
And so in that reference, in that frame, I think that we'd agree that irrigators' needs are very important and that we aren't trying to do anything that would short irrigators of their use of water in the Snake above American Falls or above Milner.
Q. (BY MS. McHUGH): And I understand that answer and I understand, but my question was a little bit different.
My question was, do you as the company

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believe that the primary purpose of the Reclamation projects was for irrigation purposes?
A. I agree that the primary purpose is for irrigation and power generation and flood control.
Q. Okay. And where do you get your understanding that one of the primary purposes of the Bureau of Reclamation projects were for hydropower purposes?
A. And not all projects, but I think the projects that have hydropower on them, especially Palisades, that is one of the listed purposes of that project. And Minidoka, is my understanding.
Q. And it's your understanding that those are listed as the primary purpose of those two reservoirs?
A. That's my understanding.
Q. And the primary purpose of American Falls Reservoir does not include hydropower?
A. I don't know if it does. I know American Falls Reservoir had hydropower generation after it was first built, but I don't know that that's a primary purpose.
Q. And the water stored in the Bureau projects, your understanding is that that water is

then used by contract holders; is that what you understand?
A. I understand.
Q. Okay. And the contract holders have contracts for varying purposes; is that fair to say?
A. True.
Q. Would you believe that it's consistent, then, with the primary purposes of the reservoirs and those contract holders that the Bureau of Reclamation's first obligation would be to protect those users who are using water for the primary purpose of irrigation?
A. Well, I believe that the Bureau has an obligation to honor all of its spaceholder contracts, including the contract that it has with Idaho Power Company.
And how the Bureau operates its system to honor all of those contracts is really up to the Bureau. And I believe that they need to honor all of their contracts for all spaceholders.
Q. Do you believe the Bureau could operate its projects in violation of State law?
A. I think that would be between the water right holder, the Bureau, and the State.

Q. Do you have an understanding of whether the Bureau can operate its projects in violation of State law?
MR. DeVOE: Objection. Calls for a legal conclusion.
THE WITNESS: I don't have an understanding of that.
Q. (BY MS. McHUGH): Have you ever had a conversation about that?
A. I have not.
Q. Now, I think you've been asked this question in different ways. And I understand that the company's answer is "We're supportive of irrigation." So I'm clear on that.
But I guess I would like a real direct answer, bottom line, on whether or not Idaho Power Company's demand for secondary storage could affect fill of the reservoirs.
MR. DeVOE: Objection. This has been asked and answered more than ten times in this deposition now. We don't need to keep repeating testimony for the record. Both parties have gotten an answer to this question on multiple occasions.
Now, you have not produced an expert

report, and nobody else in this case has produced an expert report to show what the impact is on spaceholders or fill or anything else. And Mr. Bowling has answered this question enough. There isn't any further purpose in rehashing this ground.
MS. McHUGH: Thank you.
Q. You can go ahead and answer the question.
A. Well, I think I have answered the question several different ways. And I think that was my answer.
Q. Okay. And then I'm going to have to have you repeat your answer, because I didn't understand your answer before.
A. Okay. Repeat your question, then, how you phrased it.
Q. Okay. And I'm going to say this, that I understand the company's position is that you support irrigated agriculture. I've heard that several times. But let's back up a little bit.
Are you familiar with the teacup diagram or something that's referred to as "the teacup diagram" in the Upper Snake?
A. I am.

Exhibit E

7/14/49

MEMORANDUM

CONTRACTS BETWEEN IDAHO POWER COMPANY AND U.S. BUREAU OF RECLAMATION FOR POWER AT AMERICAN FALLS

There are two contracts between the Idaho Power Company and the Bureau of Reclamation in connection with the American Falls situation.

The first contract, know as the 1923 contract, is the one in which Idaho Power Company turned over its water rights to the Bureau of Reclamation in order to make the American Falls storage reservoir possible. In doing this the Bureau of Reclamation gave Idaho Power Company certain power rights for the use of water passing American Falls. These rights are classified as Primary, Secondary, and Tertiary Rights. Idaho Power Company holds the Primary Right for the use of summer water for power purposes to this extent: Beginning April 1 at 100 s.f. and increasing uniformly to 2500 s.f. on May 1 and continuing at the rate of 2500 s.f. until September 15, at which time its rights decrease gradually to 100 s.f. on October 31. This so-called Primary Right takes precedence over any other water for power purposes at American Falls.

The Bureau of Reclamation then has a Secondary Power Right beginning April 1 at the rate of 6700 kw, or 1500 s.f., and increasing uniformly to 25,000 kw, or 5,000 s.f. on May 1, and thence increasing uniformly to 30,000 kw, or 6,000 s.f. on June 1, then continuing at this rate until September 15 when the Bureau's Secondary Right starts gradually decreasing to 1500 s.f., or 55,000 kw, on October 31. This combination of second feet and kilowatts is understood to be controlled by whichever figure is the larger.

These two Rights, Primary and Secondary, make use of a maximum of 8500 s.f. during the maximum irrigation period of the summer. However, most of this time the water released for irrigation is between 11,000 and 12,000 s.f., sometimes slightly greater. Such water as exceeds the 8500 s.f., or the sum of the Primary and Secondary Rights as listed above, is classed as Tertiary Right, and in the contract provision was made for either the Bureau or the Idaho Power Company to install capacity for such use. Idaho Power Company does have installed capacity for this Tertiary Right in case the Bureau of Reclamation takes advantage of its privilege to use up to 6,000 s.f. of the water passing.

Idaho Power Company has in addition to the Rights above listed certain storage Rights in the American Falls reservoir. For instance, the first 300,000 a.f. of storable water each year after October 1 is water for Idaho Power Company's storage Rights. Of this, 45,000 a.f. is a Primary storage Right which carries through the following year up to November 15, a little over one year after storage begins. The remaining 255,000 a.f. is classed as Secondary storage Right and this means that it is stored in space belonging to someone else and, therefore, must be used or given up at certain definite periods when the owners of the space would be apt to require it. All but 60,000 a.f. must be used by April 1 and the remainder by June 10 or whenever the reservoir fills.

While the Secondary storage water of Idaho Power Company, or that water stored in Secondary space, may be drawn past American Falls at any rates desired it can only be demanded past Milner at certain rates set up in the contract which approximately takes care of the capacity of the Shoshone Falls power plant. This flow past Milner is more specifically set forth as being that water necessary, when added to the water originating below Milner dam, to make a flow of 790 s.f. for the period of October 1 to November 30, 890 s.f. for the period of December 1 to January 31, 790 s.f. from February 1 to February 12, 690 s.f. from February 13

to April 15, and 790 s.f. from April 16 to June 10. These figures were later changed in the 1934 Water Conservation Contract between the Bureau and the power company.

The government's winter power Rights at American Falls consist of the use of such water as is necessary to pass to provide for power at the Minidoka power plant to the extent of 10,000 kw. This 10,000 kw is the sum of the power that may be generated at the Minidoka power plant and the American Falls power plant with the Minidoka power plant generating the most possible with the water available, the idea being to reduce the amount of water passing American Falls to a minimum. It is, of course, possible for the Minidoka power plant to make use of Idaho Power Company's Primary and/or Secondary storage water as it passes that point in the river.

In the contract between the Bureau and the power company, dated October 1, 1934, and commonly referred to as the Water Conservation Contract, Idaho Power Company gave up somewhat its Secondary storage water Rights to the Bureau in exchange for certain advantages. In this contract the Secondary water ordered by Idaho Power Company to pass Milner may be such as is necessary to provide the following flows at Shoshone Falls: 790 s.f. from October 1 to November 30, 670 s.f. from October 1 to January 31, 790 s.f. from February 1 to February 12, and 690 s.f. from February 13 to March 15. This amounts to about 105,000 s.f., thus giving up for irrigation purposes approximately 150 s.f. of Idaho Power Company's Secondary storage water. In this contract Idaho Power Company further agrees to provide free to the government each winter (October to March inclusive) power as is necessary when added to the output of the Minidoka power plant to make a total of 10,000 kw. It is understood that the Minidoka power plant will utilize such water as is available at that point to the fullest advantage. Idaho Power Company also provides summer (April to September inclusive) service for the Bureau, to the extent of 7,500 kw, of which that part over 4,000 kw is for breakdown service only. This contract also perpetuates the Black Canyon contract between the Bureau and Idaho Power Company which had previously expired, the idea being that in effect much of the power generated at Black Canyon is transmitted to Minidoka for use on that project during the winter months. To terminate this contract the Bureau of Reclamation must give Idaho Power Company two years written notice. This contract also provides that should the government construct and place in operation a power plant at American Falls this contract shall be terminated and the government shall give the Company at least sixty days notice prior to the placing of such American Falls power plant in operation.

From the above it will be seen that the Bureau has certain Rights at American Falls permitting it to construct a power plant. However, if this is done the Water Conservation Contract of 1934 is cancellable and this will automatically cancel the contract between the Idaho Power Company and the Bureau for the operation of the Black Canyon and Diversion power plants. Such an American Falls power plant, if built by the Bureau, will have little value for winter power but will have up to 10,000 kw of capacity of summer power, taking much of it from the power now generated by Idaho Power Company at its American Falls plant.

Idaho Power Company's American Falls plant has a rated capacity of 27,000 kw. The 2500 s.f. of Primary Right provided in the contract will generate about 6,000 to 8,500 kw. The power company's Tertiary Rights are quite variable and would provide up to about 8,590 of power during the month of maximum flow for irrigation purposes.

From this it will be seen that should the government exercise its full Rights at American Falls Idaho Power Company would have installed at that point approximately 10,000 kw of capacity which it would not be able to make any use of and a considerable portion of the remainder of the plant would be used only a small part of the time. This suggests the possibility that Idaho Power Company might supply the Bureau of Reclamation out of its surplus capacity up to 10,000 or 12,000 kw of power at a very nominal charge. Such power would go to irrigation pumping and, therefore, would not be taxable, that is, not be taxable for kilowatt-hour purposes, and would add to the ad valorem tax deduction for property used for irrigation purposes.

B. C. Russell
July 14, 1949

Exhibit F

AMERICAN FALLS STORAGE:

American Falls Reservoir has been constructed with a capacity of 1,700,000 acre feet on a stream which has a mean annual runoff (for the 25 years ending September 30, 1926) of 6,625,000 acre feet. Consequently, we have the situation of a reservoir through which, of necessity, a large amount of water must be by passed. Upon the manner in which this water is by passed, or upon the time and rate the storage is gained and is again released, depends in the larger sense the power possibilities of the American Falls powersite. This is of considerably more importance than the possible use of the capacity now surplus to irrigation requirements.

Construction of the reservoir was brought about mainly to supply the need of irrigation diversions in the Snake River drainage for supplemental supply. For most of the diversions, such supplemental supply was not needed in years of normal runoff; but instead, was only needed in years of low runoff, such occurring usually not oftener than two years out of five. In order to make the construction possible, the Bureau of Reclamation joined the other subscribers for capacity, reserving 520,000 acre feet of capacity for the Minidoka Extension Project. This was to be wholly a pumping project for supplying lands lying above the present Minidoka North Side gravity project. The anticipation of the pumping load which would occur with the Extension Project, probably occasioned the power capacity reservation made at American Falls for the Bureau.

The Minidoka Extension Project now seems to be indefinitely side tracked through authorization, and commencement of at least preliminary work, on the Gooding Project; a project wholly gravity. Completion of the Gooding Project will absorb all funds normally available for development work in Idaho for a number of years to come.

Preliminary to construction development only to a capacity of 1,100,000 acre feet was considered. Later, during construction, it was decided to increase the capacity to 1,700,000 acre feet; the subscribers agreeing to guarantee the additional costs in construction. In most instances, the storage obtainable from the original plan was sufficient for actual needs, but the additional capacity could be obtained at such low unit cost that the subscribers felt constrained to accept the additional quantity and hold it for future, possible needs. Consequently, it would appear that, with the Minidoka Extension indefinitely deferred and the Gooding Project just commencing, the irrigation requirements for storage even in low runoff years for some time to come would not exceed 800,000 to 900,000 acre feet of storage. The Gooding Project must of course, be provided with storage.

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In the manner in which the reservoir is now operated by the Bureau of Reclamation, it may be expected that the reservoir will fill during the fall or early winter months and that the normal inflow will be wasted from then on until storage release is necessitated for irrigation requirements. Through the non-flood period, such normal inflow is less than the capacity of the American Falls plant of the Idaho Power Company. Through the flood months, such normal inflow is much in excess of the capacity of the plant.

The runoff of Snake River is such that the present irrigation requirements for storage can be obtained by storing the flow available for storage during one, two, or at the most three, months of the spring flood runoff period. With such the case, there is positively no need whatsoever solely to obtain the necessary storage, for the policy adopted by the Bureau of storing the first flow available in the fall and continuing such storage until the entire capacity is filled. This method results in the October and November flow being practically the normal inflow to the reservoir and below the power plant capacity; and, a waste, as far as power use is concerned, of most of the Spring, flood period runoff. Very little gain is occasioned through obtaining the release of the 255,000 acre feet of secondary storage belonging to the Idaho Power Company, for the reason that its withdrawal merely delays the time when the reservoir becomes full and the "winter waste", or the normal flow of the stream, becomes available. Apparently, the only advantage gained from possession of the secondary storage right comes from the ability to order its release in any quantity desired and in this way, obtain best fit of power capacity and requirements.

The present irrigation needs, at the outside, only require about one-half the storage capacity of the American Falls reservoir. With this the case, the remaining half of the capacity can only be made useful for storing water for release when it can be effectively used for power purposes. The economic mistake in present American Falls reservoir operation consists in storing the fall runoff and wasting the Spring months flood runoff above power plant capacity. If the operation of the reservoir were planned so as to have a full reservoir at the end of the Spring runoff period, the irrigation requirements during the low flow period of the Summer would only exhaust half of the storage obtained. The remainder, in addition to all inflow, could then be released through the fall and winter months and be wholly and beneficially used for power purposes, provided load were available to absorb the supply. This procedure could as well be followed under the terms of the

AFF008829

"American Falls Contract", between the United States and the Idaho Power Company, as the present method. In fact, the proviso made in the contract relative to "winter waste" would indicate that some such reasonable procedure was intended to be adopted rather than the method that has been practiced since the reservoir was first completed.

For the next two or three years at least, the combined power supplies of the Utah and Idaho power companies without any possible use of additional American Falls storage will be in excess of their combined power load. The advantage, therefore, in securing a change in method now would only be to have this power capacity available at a time later, when it could be usefully applied. It is appreciated moreover, that the longer the present method is practiced, the more difficult it will be to obtain its change; hence, it is urged that effort now be made to effect the change. It is felt that a change in the method of operation of the reservoir would result in a power gain probably equal to any that might be obtained from the purchase of capacity, even were it possible to purchase such capacity.

The inflow to Snake River below American Falls is sufficient to operate the present plants of the Idaho Power Company to their capacity. Hence, release of American Falls storage during the fall and winter months would be only useful at American Falls plant. Here the output is considered 3.5 kw per cfs, or in amount of only 40-kwh per acre foot released.

Under the present situation as to manner of storage operation, the firm average capacity of American Falls plant is considered to be 26,000 kw from May to September inclusive, and for the remaining months except March and April, which are excess power supply months, as follows:

	Firm Average Capacity kw	Installed Capacity kw	Amount Below Installed Capacity kw
October	11,500	26,000	14,500
November	6,500	26,000	19,500
December	14,000*	26,000	12,000
January	6,500	26,000	19,500
February	6,500	26,000	19,500
		130,000	85,000

* Excess over 6,500 kw assumed obtained from use of the 255,000 ac ft of secondary storage owned by Idaho Power Company.

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To generate 130,000 month kilowatts requires 39,400 month second feet. The following indicates the actual stream flow which has occurred at American Falls.

SNAKE RIVER AT HEBLET, IDAHO

	1914 -15	1915 -16	1916 -17	1917 -18	1918 -19	1919 -20	1920 -21	1921 -22	1922 -23	1923 -24
	Cubic feet per Second									
Oct.	6470	5200	7790	7130	5870	4000	5440	4800	3910	6570
Nov.	8220	6120	6810	7220	6890	5650	6720	6050	6190	6650
Dec.	6480	5410	5890	7080	5900	4410	6140	6260	5640	5730
Jan.	6000	4530	5020	6300	6200	4680	5900	4950	5970	6570
Feb.	6130	5550	5340	5420	5710	4990	5850	5360	4890	6650
	37300	27810	30850	33150	30280	23730	30050	27420	26600	31750
Amount less than 39400 m.s.f.-	2100	11590	8550	6250	9020	15670	9350	11980	12800	7570
Equivalent acre feet	125,100	513,000		541,200		561,000		768,000		
	695,400		375,000		940,200		718,800		460,200	

The "equivalent acre feet" quantities of the above tabulation indicate the amount of storage required in addition to normal inflow to the reservoir to permit generation of full machine capacity at American Falls. If the assumption is correct that 545,000 - 645,000 acre feet of capacity is available in excess of present irrigation requirements and after supplying the 255,000 ac ft of secondary power storage, it would seem it is well within the ability of the reservoir to furnish the needed supply except in low run off years. Occurance of such low years averages about one in three.

The greatest power gain that might be obtained from the above outlined procedure can be indicated by subtracting the firm average capacity from the installed machine capacity (130,000 m. kw minus 85,000 m. kw equals 45,000 m. kw). This gives the equivalent of 32,400,000 kwh. Evaluation of such quantity would give the greatest possible amount that might be paid to make this energy available.

It should be borne in mind the above outlines the greatest power gain possible, that such gain is possible only probably two years out of three, and, that possible use of present winter waste has been entirely disregarded. Hence it would seem that the valuation arrived at by such procedure should be reduced by at least one-half in determining true, useful value. It should also be borne in mind that this

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additional power source is not needed to meet anticipated load requirements for probably at least three years. Action now, however, would clear an unsatisfactory situation at a time when the reservoir capacity is much in excess of irrigation requirements, undoubtedly the cause of the Bureau being in a certain state of mind regarding reservoir use. In later years irrigation requirements will undoubtedly be increased. For this reason it is not believed reservoir capacity for power purposes can be purchased outright. If it could, it might prove a most valuable asset for increasing the possible justified development at Twin Falls and Shoshone. For such purpose 500,000 acre feet or more might be most useful.

From all of the foregoing, the following conclusions have been reached relative to American Falls Storage:

That, for greatest power utilization of the Snake River flow, a change in method of reservoir operation is essential. For greatest economic use, the flood runoff of the Spring, now wasted, should be stored. A full reservoir obtained from such supply would provide for all irrigation requirements, estimated to now be only between 600,000 - 900,000 acre feet of the total capacity of 1,700,000 acre feet; and use of the surplus, together with the inflow to the reservoir during the period, would permit during most years of full output of the American Falls plant during October - February, a period now of materially decreased output.

That, while the Bureau of Reclamation will probably not dispose of capacity in the reservoir permanently, they might consent to a change in method as to time of obtaining storage and might regard the delivery of surplus obtained merely as providing regulation similar to the 255,000 acre feet of "secondary storage" now provided the Idaho Power Company under the "American Falls contract". The procedure proposed for storing only from the Spring flood runoff could as well be followed under the terms of the contract as the present method. In fact, the proviso made in the contract relative to "winter waste" would indicate that some such reasonable procedure was intended to be followed rather than the method that has been practiced since the reservoir was first completed.

That the power gain from such change in method may be regarded for all practical purposes as the equivalent of 16,000,000 kwh annually for at least the next ten years.

That the anticipated combined load of the two companies will not absorb this additional power supply in addition to all of that of existing sources for probably at least three years.

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That action on the matter now, however, would clear a most unsatisfactory situation and might provide a way whereby storage release may be later obtained and made of greater value through use at the Twin Falls and Shoshone powersites.

AFF008833

Exhibit G

B-2-1

BES:EAG

BUREAU OF RECLAMATION
RECEIVED
NOV 15 1926
BURLEY, IDAHO

603 Postoffice Building
Portland, Oregon
November 12,1926

From District Counsel B. E. Stoutemyer

To Commissioner

Subject: Conferences with representatives of the Idaho Power Company. American Falls Reservoir, Minidoka project.

1. During our recent visit in Boise, Mr. Banks and I had several conferences with Mr. W. R. Putnam, General Manager of the Idaho Power Company, and with Mr. Boone, the attorney for the company. Some of the conferences were also attended by Mr. Gleason, our electrical engineer at the Minidoka power plant, and by Mr. Debler of the Denver office.

2. I am enclosing for your information copy of Mr. Banks' letter of November 2nd outlining the informal understanding reached at these conferences.

3. From the standpoint of the Government the arrangement outlined in this letter has the advantage that it will give us the same amount of power which we would secure by operating the Island and West Side plants and will save us the expense of operating the plants and also the wear and tear on the machinery and equipment. The last consideration is an important one to the Government for the reason that the machinery in the Island and West Side plants is approaching the end of its usefulness and it is very desirable that it should be saved for use in case of emergencies or to carry peak loads in the middle of the irrigation season rather than to be worn out by continuous operation. If the arrangement outlined in Mr. Banks' letter of November 2nd to Mr. Putnam were not carried out, it would be our plan to operate the Island and West Side plants at American Falls and secure as much power as possible from that source in order to reduce to a minimum the amount of water which will have to

(B-2-12 Minidoka Power Contracts)

AF019216

be discharged through the Minidoka power plant in order to supply the power demand on the Minidoka project.

4. From the standpoint of the power company, the arrangement provided for in Mr. Banks' letter of November 2nd has a number of advantages. First, the 850 second feet of water which would otherwise be run through the Island and West Side power plants if used through the new machinery of the company's East Side plant will produce considerably more than the 1600 k.w. which the company will deliver to us at Milner in lieu of the 1600 which we could generate at the Island and West Side plants and, second, inasmuch as the company has a large surplus of power on the western end of its system but no connecting transmission line between Milner and American Falls, the power delivered to us at Milner is really surplus power for which the company would otherwise have no market, while the power generated with the 850 second feet at American Falls is needed to supply the requirements of the Utah Light and Power Company which is connected with the Idaho Power Company at American Falls. Thus the amount of power which the company can generate with this 850 second feet will be virtually clear gain to the company.

5. From the discussions at these various conferences it appears that the Idaho Power Company in all probability will not call for any of its 300,000 acre feet of reserved water until about or after the first of March. The capacity of the company's plant at American Falls is sufficient to use the entire 255,000 acre feet (all of the 300,000 acre feet not required to fill the 45,000 acre feet of primary storage apacity) during the month of March. Mr. Putnam, however, at our last meeting expressed a willingness on the part of the company to waive the company's right to this 255,000 acre feet altogether if it is found by March 1st that the dry weather has continued to such an extent that this water is likely to be needed for irrigation purposes the following summer.

6. The fact that the officers of the power company express a willingness to waive the water rights, which they have already acquired under existing contracts, for the benefit of irrigators if the water is needed for irrigation purposes, will throw

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some light upon the importance of an ample water supply for irrigation purposes in the Snake River valley in the minds of the large business concerns operating in that section. The fact that the officers of the company express a willingness to give up the water to which they are already entitled, if needed for irrigation, may also throw some light upon the question as to whether they would be likely to bid against the irrigators for the Government's share of the stored water at American Falls.

7. It is probable that by March 1st we will know enough about the snowfall on the Snake River watershed to make a fairly accurate prediction as to whether we are to have another extremely low water year in the Snake River valley during the coming irrigation season.

8. For your information, I am also enclosing copy of Mr. Banks' letter of November 10th to Mr. Putnam giving some additional data as to the plans which will probably be adopted in operating the American Falls and Lake Walcott reservoirs and the power plants at American Falls and the Minidoka dam.

- - - -

B E Stoutemyer

encls.

cc - Denver
American Falls
Burley ✓

AF019218

Exhibit H

3-240-V

October 3, 1927.

AIR MAIL

Mr. Clay C. Boswell
Electric Bond & Share Company
2 Rector Street
New York City, N.Y.

Dear Mr. Boswell:

Replying to yours of September 29th, please be advised that on Wednesday afternoon, September 28th, Messrs. Senger and Putnam of the Idaho Power Company had a one and one-half hour conference with Messrs. F. A. Banks, E. B. Darlington, C. F. Gleason, Dana Tenglin and Spencer Baird of the U. S. Reclamation Service on the subject of winter release from the American Falls reservoir. Mr. Banks was, generally, the spokesman for the Reclamation officials and stated that it was the program of the Reclamation Service to carry out strictly the terms of the Idaho Power Company contract with the United States government covering release of water from the American Falls reservoir.

The reservoir on that date contained approximately 1,590,000 acre feet. They represented that by October 1st there would be somewhere between 700,000 and 800,000 acre feet of unfilled storage capacity on the upper Snake River, made up approximately as follows:

American Falls reservoir	350,000 acre feet
Jackson Lake reservoir	350,000 "
Smaller reservoirs	50,000 "

They stated that their estimate of the storable water, made in accordance with the contract provisions, is as follows: 1,600,000 acre feet minus 200,000 acre feet leaves 1,400,000 acre feet. Deducting therefrom the 300,000 acre feet primary and secondary storage belonging to the Idaho Power Company leaves 1,000,000 acre feet. Deducting therefrom the 750,000 acre feet required to fill the storage reservoir leaves only 250,000 acre feet available for wastage.

During the storage season from November 1st to April 1st they plan to release from the American Falls reservoir an average flow of 2000 cfs, approximating a total of 600,000 acre feet during the five months, which release is required to take care of the requirements of the Minidoka power plant. This release is in excess of the above 250,000 acre feet which they estimate that they can waste, and is slightly in excess of the 250,000 acre feet of water available for wastage plus the 300,000 acre feet of storage of the Idaho Power Company.

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The above figures they represented as only approximate and Mr. Darlington has agreed to revise these figures and submit to us some time this week their estimate based on conditions as of October 1st. They frankly acknowledge that they are assuming that a minimum water condition will prevail this winter, and that they are not justified in taking any other assumption until conditions have actually changed. Since their first measurements of snow and water conditions at Jackson Lake are not taken until December 15th, they claim that even with favorable water conditions it will be impossible to make any change in their program until after January 1st. However, they have agreed to furnish us with revised estimates, possibly fortnightly, but certainly once a month.

In the course of the conversation Mr. Banks stated that it was necessary for the Reclamation officials to follow strictly the interpretation of the contract, since if they did not do so they would be apt to lose the rights. I pointed out to them that the contract was specific on this question since it provided that neither party could lose any rights to the other by non-use. Mr. Baird, Mr. Stentenyer's assistant, was inclined to agree with me on this point, and stated that he thought if it was deemed advisable by both parties to have a modification of the contract for this storage season, or if some points of the contract in reference to winter release were ambiguous, a stipulation might be entered into which would provide that whatever additional winter release might be made this winter would not establish a precedent for the future, and would not affect the contract rights of either party.

In the course of the discussion Mr. Banks acknowledged that their action of last spring resulted in approximately 1,800,000 acre feet of water being wasted over Milner dam during June, which water would have been released earlier in the season and thus have been made available for power purposes. He further acknowledged that their present program will

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very possibly result in a similar waste during the latter part of the flood season of 1928. He then indicated the motive which was prompting him to take this position; namely, the desire to sell us water during the winter months. He indicated that he felt that we should allow the Government, if it was decided to waste water in excess of the amount provided for in the contract, one-half of the price of coal that was saved to the Utah Power & Light Company by such release.

In the course of our conversation Mr. Banks definitely stated that he did not understand that we were entitled to require the release of water during September and October for power purposes, which water makes up the secondary power right belonging to the Government, unless this water was required for irrigation purposes. I explained to Mr. Banks that I was quite certain that his interpretation of this provision was in error and that we were entitled to require the release of the water making up their secondary power right, as well as the water making up our primary power right even though that amount of water was not required for irrigation purposes. However, this point was of little moment since their irrigation requirements will probably approximate the sum of the two power rights.

For some reason they started releasing water considerably in excess of the irrigation requirements so that on Thursday noon, September 29th, our work on the Shoshone Falls dam was flooded to the point where we had to cease work. Mr. Senger made arrangements with Mr. Darlington to cut the release at American Falls down to the amount required by irrigation so that there will be little or no water discharged by Milner. At the time this arrangement was made, Friday, September 30th, there was approximately 2700 second feet passing Shoshone Falls. This arrangement is to continue for approximately ten days, the time required by our construction force to install the concrete in the middle section of the new dam at Shoshone Falls, the concrete in both ends of the dam having previously been poured.

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I am asking Mr. Senger to make up the statements necessary to answer questions Nos. 2 and 4 of your letter of September 29th. Question #1, as answered above, is approximately 1,250,000 acre feet as of October 1st. Question #3, as answered above, is an average release of 2000 second feet during the five months of November 1, 1927, to March 31, 1928. We still have the 45,000 acre feet of primary storage, which must be used prior to November 10th, and after November 1st, or possibly not until January 1st, will have the 250,000 acre feet of secondary storage provided during the coming storage season. Whenever we demand the release of this water the Reclamation Service will charge against this water all water released, including the 2000 second feet that otherwise would be released. Consequently, it would be advisable, when this water is utilized, to have it released at the full amount required to operate our Rock Side power plant to full capacity; that is, approximately 8500 second feet.

The Reno officials of the Reclamation Service at Lovelock have given our people to understand that they contemplate releasing the normal flow of the river all winter, and holding their storage waters during the spring floods. I am inclined to think that Mr. Banks is the man who is responsible for the change in attitude. Personally, we still spend very little time at Lovelock talking from now on where we are to get this water at the proper time. We intended to have Mr. Burlington would have general charge of the water rentals. Mr. Burlington has always appeared very friendly to me, and I am more than pleased with him to the fullest extent allowed by the Reclamation officials.

At the close of the above discussion we asked whether they desired to take up a discussion of the questions raised in Mr. E. E. Scott's letter of August 17, 1927, in reference to the Government power plant. Mr. Senger replied that due to uncertainty and interlocutory in reference to the construction of the proposed power plant at Lovelock Falls, he did not think that it was necessary to take any time for this discussion.

Very truly yours,

WEF/HC
cc - Mr. J. A. Kale
Mr. H. D. Hoover

Fleischmann & Co's Mgr.

B1_IPC0013839

Exhibit I

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 21435
Permit No. R 273
District No. 70

Cancelled

1. Name of Applicant: Idaho Power Company

Postoffice Address: Boise County: Ada State: Idaho.

I If applicant is a corporation, give:

(a) Date and place of incorporation: May 6, 1915; Augusta, Maine
(b) Amount of capital stock: $ 15,310,000.00
(c) Amount paid in: $ 15,293,500
(d) Names and addresses of directors: Geo.A.Bremer,Jerome,Ida.;J.W.Cunningham,Boise,Ida.; E.H.Dewey,Wampa,Ida.;James Duckworth,Blackfoot,Ida.;G.F.Grossbeck,New York,N.Y.;F.F.Johnson, Boise,Ida.;W.P.Lyon,Caldwell,Ida.;O.O.F.Markhus,Boise,Ida.;D.F.McGee,New York,N.Y.;E.J.

II The financial resources of the applicant are: (a) Cash on hand: $208,199.98/Ostrander,Twin Falls,Ida. (b) Treasury stock: $ 15,500.00 (c) Bonds to be issued: $3,000,000, Treasury/W.R.Putnam, (d) Other resources: 30,782,185.26 Bonds (Pledged)Boise,Ida.;D.W.Standrod,Pocatello Ida.;E.R.Tinker,New York,N.Y.; E.A.VanSicklin,Boise Ida.;Wm.T.Wallace,New York,N.Y.; H. J. Ward, Ilyssa, 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 center of the proposed reservoir is located North 12 degrees 16 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 SE¼ SE¼ 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 3500 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 11 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

13 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)

14 I KNOW 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. - L. to June 21-1931

Beneficial use of water stored in accordance herewith to be made on or before June 21, 1938.

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. 4158 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. Kierated 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 E. C. Kierstead on Application filed December 26, 1918.

11. Permit No. 3686 for 6000 c. f. s. of the waters of Snake River, issued by the State Engineer of the State of Idaho to Pentress 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. 21476 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 21 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 J

BES-PH.

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. B. P. STOUTEMYER.

By FH.

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

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

Exhibit K

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 _____
President.

Attest:

_____
Secretary.

Exhibit L

OFFICE OF DISTRICT COUNSEL
U. S. RECLAMATION SERVICE
BOISE, IDAHO
FEB 16 1933
RECEIVED.

MEMORANDUM

Re: Letter of R. W. Faris, Commissioner of Reclamation, under date of January 4, 1933, with a priority of March 17, 1931. The application contains the following inquiry:

QUESTION:

Has the Idaho Power Company waived and abandoned all rights it might have acquired under its Permit No. R-873, 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. 16801, 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?

FEB 20 33 75611

OPINION:

Under date of March 17, 1931, the Idaho Power Company made application No. R-31470 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-875 issued thereupon, with a priority of March 17, 1931. 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." (More 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-875 was submitted. This proof shows 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-875, and reservoir capacity was made greater, in accordance with Agreement, June 19, 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. 4168, 14067 and 16630 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. 16201, to divert 1200 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. 16753 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. 16754 and 17060, 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 16665 at American Falls; No. 14681 at Shoshone Falls, No. 3688 at Lower Salmon Falls, and No. 14668 at Swan Falls."

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

So 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-869, 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 1,000,000 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 November 10th, 1923, 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 28, 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 has 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. 10801, 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 further 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 (c) and (e), 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 37, line 838, page 34.

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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 19, 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 created. Either the Power Company would erect its dam, which would be about 54 feet high, 8500 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 those 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 not 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 irrigation 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

S-LW

its later priority. We are not, however, informed as to whether such a situation would possibly arise. Again paragraph 87 of the contract between the Company and the United States, in which it is noted that the construction works and use by either party shall apply to proof on the merits of the earliest priority, clearly suggests and it seems to me that the Government might have submitted prior 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 800, 828 Pac. 1110, which is stated as follows:

> "It is obvious that respondent has sought to support Permit No. 10416 with the work stripped from Permit No. 7050. It is true that after the application of the work to Permit No. 10416 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 Hyster 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. BRENNAHAN

LMB/d

February 10, 1933.

Exhibit M

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. S. Hazeltet, 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. R1476 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."

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#8

Idaho Power Company 9/28/32.

in response to which the permit holder answered:

"The works under Idaho Power Company Permit No. 13947 and its successors, Nos. 16728 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 granted. Permit No. 14609, 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 6 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. 4188, 14077 and 16635 at American Falls; Nos. 14831 at Shoshone Falls; No. 3685 at Lower Salmon Falls, and No. 16728 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. 14831, for diversion and use at Shoshone Falls.

Under date of October 31, 1919, a license for 8,000 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. 14348, for diversion and use at Twin Falls.

in response to which the permit holder answered:

> "The works under Idaho Power Company Permit No. 13947 and its successors, Nos. 16735 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. 14809, 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. 4186, 14087 and 16635 at American Falls, No. 14681 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. 14681, 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.

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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. 15701, 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. 15701, which application was approved by the State Commissioner of Reclamation January 15, 1927, and Permit No. 16656 issued to applicant, work thereunder to be completed on or before July 15, 1927.

Under date of July 15, 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. 16656
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. 16656, 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 1872.8 feet from the southeast corner of Section 30, Township 7 South, Range 31 East of Boise Meridian, being the Company's dam

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at American Falls; and that the place of intended use of said water is at the Company's existing East Side plant, in the NW¼ 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

#6

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 14068 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. 15201 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 N

C. BEN ROSS, GOVERNOR

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

BUREAU OF WATER RESOURCES
HANS 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."

C1-2665
[illegible]

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 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, 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

RJF/mt

C1 2065
P .13

Exhibit O

11-32—a

THE FEDERAL POWER COMMISSION

LICENSE ON GOVERNMENT LANDS

Project No. 18
Idaho

Idaho Power Company

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, Idaho Power Company, hereinafter called "the Licensee," a corporation organized and existing under the laws of the State of Maine and having its office and principal place of business in the city of Boise, in the State of Idaho, has, pursuant to the provisions of a preliminary permit issued on the 30th day of April 1924,

made application in due and proper form to the Commission for a license for a power project designated as Project No. 16 on the records of the Commission, and for authority to construct, maintain and operate, on the Snake River at Twin Falls, in the vicinity of Jerome and Twin Falls, in the counties of Jerome and Twin Falls, State of Idaho, 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 its 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, entered Order 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 - - - - - - - - - - - - - -

3

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 25th 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. 15-10);

Exhibit K: Sheet 3, map designated "General Plan of Development (F.P.C. No. 15-13);

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 2 and 3: Cited above.

Exhibit 4: Plans, in 3 sheets, designated: "Plan of Power House, Intake, and South Channel Dam" (F.P.C. No. 18-21);

"Dam - Profile and Section" (F.P.C. No. 18-22;

"Power House Plan and Section through Power House, Penstock, and Intake" (F.P.C. No. 18-23);

Exhibit 5: Two typewritten sheets designated "Description of Mechanical, Electrical, and Transmission Equipment," signed Kaaa Power Company by M. 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 F, K, P, L, and K respectively, and approved ~~by the Executive Secretary for the Commission~~ in the Commission'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 result 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 3,317 feet above sea level, and shall complete the dam by a crest elevation of 3,350 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 proportion of the cost of such supervision as the Commission may deem equitable in the circumstances. 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 protecting granite 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, water, 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 dam-sites now or 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 such acknowledgment of 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 plant is 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 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 location has 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 conform 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 [illegible]. 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 [illegible]. 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 [illegible]. 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 efficient 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.

FPR-1EM
1-11-34

Executed in triplicate.

Exhibit P

(copy)

B-11-23

November 9, 1933

United States Bureau of Reclamation,
603 Postoffice Building,
Portland, Oregon.

Attention: Mr. B. E. Stoutemyer, Dist. Counsel

Gentlemen:

Idaho Power Company's Proposal to United States Bureau of Reclamation for the Conservation of Water at American Falls for Irrigation Purposes

Idaho Power Company has for the past several years realized that further conservation of water at American Falls was advisable in order to make available a more adequate supply of water in short water years, for the lands now under irrigation in the Snake River valley.

In 1931, the Company devised several plans for conservation of water at American Falls which would effect a considerable saving in the winter use of water. One was placed in operation as of December 1, 1931, when the use of a portion of the Company's water in its secondary storage capacity was withheld until such time as the water surveys at the head of Snake River indicated an adequate supply of water for summer irrigation use. The plans so worked out at that time were discussed with Dr. Mead, Commissioner of Reclamation, with the idea that they would be at hand for study and consideration whenever the Bureau of Reclamation in later years considered that greater conservation of water at American Falls was necessary.

In the fall of 1932 and winter of 1933, the Company again assisted in making extra water available for irrigation purposes for the 1933 deason by leaving a portion of its water in the Company's secondary storage capacity in the American Falls reservoir. Again, in the latter part of 1933, the Company, upon request from the irrigators in the territory north of Blackfoot, disposed of to the latter some 50,000 acre feet of the Company's

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anticipated 1933-1934 secondary storage, which was exchanged by the irrigators for water then in storage in Jackson Lake, this latter water being delivered to those Upper Snake River irrigators who were at that time in need of an augmented water supply.

Generally, it may be said that the Company has during the years referred to contributed practically all the water that has been specially conserved at American Falls for summer irrigation use, which, with the exception of the 50,000 acre feet sold in 1933, has been furnished without cost to the irrigators.

Inadequate precipitation during the winters of 1931, 1932 and the early fall of 1933 has caused a feeling among Snake River irrigators that further conservation of water must be made at American Falls if there is to be an assurance of an adequate supply of summer irrigation water in short water seasons. This sentiment has been expressed in a series of recently-held meetings hereinafter referred to.

At a meeting of the irrigators held in Idaho Falls in September, 1933, discussion was had of various methods possible to enable this conservation of water. From newspaper reports of this meeting, among the plans suggested was that the Bureau of Reclamation and Idaho Power Company enter into a co-operative plan for the accomplishment of this purpose. The meeting was adjourned without definite action but with the idea that a meeting would be called at Idaho Falls within a week or so to further discuss the matter.

For some reason, this meeting was not held, but in its stead a meeting was called at Twin Falls on October 14th, 1933. Prior to the

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Twin Falls meeting, representatives of the irrigators conferred with Idaho Power Company inquiring as to the latter's willingness to enter into some plan of conservation of water at American Falls during winter months, and the Company was invited to have a representative present at the Twin Falls meeting. At this meeting the Company stated that it believed an arrangement could be made to save a maximum amount of water through the facilities already in operation, thus making it unnecessary to construct a Government plant and unit at American Falls. It also expressed its willingness to meet with the Bureau of Reclamation of the United States and with it jointly endeavor to work out such a plan covering a long period of time. After the Company's statement at this meeting, the irrigators present asked Mr. R. E. Shepherd, President of the American Falls Reservoir District, to arrange a conference between the representatives of the Bureau of Reclamation and the Idaho Power Company to work out a plan for this conservation.

On October 19th, 1933, a meeting was held in Pocatello, at which, among other matters discussed, was the conservation and storage of water on Snake River. At this meeting, a committee consisting of Governor Ross, Senator Pope, and Congressman Coffin, was appointed with full power to act on behalf of the irrigators in formulating plans for further storage and conservation of water on the Upper Snake River.

On October 23rd, 1933, a meeting was called by Senator Pope to be held in the office of Governor Ross to discuss the Upper Snake River problems with Mr. R. F. Walter, Chief Engineer of the Bureau of Reclamation. At this meeting the idea was again expressed by a number of those present

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that the Bureau of Reclamation and Idaho Power Company should immediately endeavor to work out a scheme of water conservation at American Falls which would dispense with the advisability of constructing the proposed Government unit at that point. After this discussion, Mr. Walter suggested that a meeting be arranged with the officials of the Idaho Power Company and Mr. B. E. Stoutemyer, District Counsel of the Bureau of Reclamation, for a preliminary consideration of such a plan. A conference of Reclamation and of Company officials was had at Boise, Idaho, on November 2nd and 3rd, 1933, and as a result, the Company agreed to prepare and submit to the Bureau of Reclamation a written proposal for the conservation of water at American Falls reservoir.

It is the intent and spirit of the proposal herein to effect a substantial saving of water and at the same time meet the increased requirements for power uses and demends on the Minidoka Project at an annual cost considerably lower than would be the case if a Government plant of 7,500 kw were constructed at American Falls.

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B-11-23

PROPOSAL
OF THE IDAHO POWER COMPANY TO CONSERVE WATER AT AMERICAN FALLS FOR SUMMER IRRIGATION USES AND TO SUPPLY SUPPLEMENTAL POWER FOR THE POWER USES AND DEMANDS OF THE MINIDOKA PROJECT

A (1) The Company shall be permitted to use at American Falls from October 1st of each year to April 30th of the following year 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 contract of June 15, 1923, between the United States of America and Idaho Power Company, being a part of the water for which regulation and control is provided in Paragraph 18 of said contract, shall be subject to the direction of the Department of Reclamation, provided there shall be released such portion of said 255,000 acre feet of water as may be necessary to make the total flow of water at the head of Shoshone Falls as provided and prescribed in Paragraph 21 of said contract of June 15, 1923, and provided further that the whole of said 255,000 acre feet of water shall be released once every five years for use at the American Falls power plant of Company but in such manner that the fullest use of this water, consistent with the requirement of its complete release in that year, may be made at the Minidoka power plant of the United States.

(3) 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 each period, then the Company agrees to supply at Minidoka power plant such power and energy as is necessary to meet the power demands and uses of the Minidoka Project, provided that Company shall not at any time be required to supply power and energy in excess of 140 per cent of the power and energy so generated at said plant, and provided further that Company shall not be

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PROPOSAL

OF THE IDAHO POWER COMPANY TO CONSERVE WATER AT AMERICAN FALLS FOR SUMMER IRRIGATION USES AND TO SUPPLY SUPPLEMENTAL POWER FOR THE POWER USES AND DEMANDS OF THE MINIDOKA PROJECT

A (1) The Company shall be permitted to use at American Falls from October 1st of each year to April 30th of the following year 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 contract of June 15, 1923, between United States of America and Idaho Power Company, being a part of the water for which regulation and control is provided in Paragraph 18 of said contract, shall be subject to the direction of the Department of Reclamation, provided there shall be released such portion of said 255,000 acre feet of water as may be necessary to make the total flow of water at the head of Shoshone Falls as provided and prescribed in Paragraph 21 of said contract of June 15, 1923, and provided further that the whole of said 255,000 acre feet of water shall be released once every five years for use at the American Falls power plant of Company, but in such manner that the fullest use of this water, consistent with the requirement of its complete release in that year, may be made at the Minidoka power plant of the United States.

(3) From October 1 of each year to April 30 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 supply at Minidoka power plant such power and energy as is necessary to meet the power demands and uses on the Minidoka Project, provided that Company shall not at any time be required to supply power and energy in excess of 140 per cent of power and energy so generated at said plant, and provided further that Company shall not be obligated to furnish kilowatt hours caused by any increase in the present

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obligated to furnish kilowatt hours caused by any increase in the present air heating load on the Minidoka Project; and provided further that Company shall not be obligated in any event to furnish power hereunder 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 said contract of June 15, 1923.

(4) The Company shall, as compensation for the kilowatt hours so furnished to the United States as provided in Paragraph A (3) hereof, be entitled to such payment or payments as may be received from the sale of water saved under Paragraph A (2) hereof and one-half of such payment or payments as may be received from the sale of the water saved under paragraph A (3) hereof.

B As a part of this proposal and to meet the increase in power demands and uses on the Minidoka Project, the Company will furnish power to the United States at Minidoka for such demands and uses on said Minidoka Project as follows:

During the months of April to September, inclusive, up to 7500 K.W. and during the months of October to March, inclusive, emergency and standby power up to 3000 K.W. For power furnished by the Company under this paragraph the United States will repay during the 12 months' period beginning April 1st of each year surplus power from the Minidoka plant at the rate of 2 kilowatt hours for each kilowatt hour furnished by the Company during said 12 months' period. However, if such surplus power is not available, the United States will pay the Company at the rate of 3½ mills per kilowatt hour for such energy as is furnished under (B) hereof. Energy ordered and accepted by the Company in excess of the amount required to compensate for power furnished to the United States under (B) hereof will be paid for at the rate of 1-3/4 mills per kilowatt hour.

C This agreement shall remain in full force and effect for a period of ten (10) years from the date hereof, provided that this agreement may be cancelled at the option of the Company at such time as the United States shall

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heating load on the Minidoka Project; and provided further that Company shall not be obligated in any event to furnish power hereunder 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 KW of winter power provided for in paragraph 23 of said contract of June 15, 1923. No charge will be made under this agreement for power and energy furnished during the above period other than the charge for the emergency and standby power furnished up to 3000 KW as is provided in Paragraph B.

B As a part of this proposal and to meet the increase in power demands and uses on the Minidoka Project, the Company will furnish power to the United States at Minidoka for such demands and uses on said Minidoka Project as follows:

During the months of April to September, inclusive, up to 7500 KW and during the months of October to March, inclusive, emergency and standby power up to 3000KW. For power furnished by the Company under this paragraph the United States will repay during the 12 months' period beginning April 1st of each year surplus power from the Minidoka plant at the rate of 2 kilowatt hours for each kilowatt hour furnished by the Company during said 12 months' period. However, if such surplus power is not available, the United States will pay the Company at the rate of 3½ mills per kilowatt hour for such energy as is furnished under (b) hereof. Energy ordered and accepted by the Company in excess of the amount required to compensate for power furnished to the United States under (B) hereof will be paid for at the rate of 1-3/4 mills per kilowatt hour.

C This agreement shall remain in full force and effect until such time as the United States shall construct its proposed unit and plant at American Falls, provided that this agreement may be cancelled at the option of the Company at such time as the United States shall

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construct additional generating facilities at American Falls or Minidoka Dam, except, however, the right of such cancellation shall not exist where such additional facilities are installed at Minidoka Dam for supplementing the present facilities thereat in furnishing power demands and uses on the Minidoka Project.

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 proposal, the Company and the United States agree to effect, so far as practicable, a closely coordinated and synchronized operation of their respective plants.

E In those years when water conditions on Snake River watershed are such that all or a portion of said 255,000 acre feet of water and/or of any unsold holdover storage water in said American Falls reservoir may safely be released without prejudice to an adequate irrigation supply for the ensuing season, the same shall be released, provided nothing in this paragraph shall affect the obligation to release once every five years and to make the said total flow as provided in A (2) hereof.

F This agreement shall not alter, amend or affect in any way the terms and conditions of said contract dated June 15, 1923, between the United States and the Idaho Power Company, except insofar as the release of water is herein changed for the duration of this agreement only.

G The supplemental agreement of April 23, 1929, between the United States of America and Idaho Power Company covering winter release of water in American Falls reservoir shall be suspended during the term of this agreement, but not beyond the expiration date of said supplemental agreement.

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DISCUSSION OF THE PROPOSAL

Conservation of Water

This proposal is based on saving at least as much water as can be saved by the proposed Government plant and unit at American Falls and has this advantage that it can be placed in operation immediately. It definitely makes available for conservation 255,000 acre feet of water in the Company's secondary storage capacity in the American Falls reservoir, less the release to make the total flow at the head of Shoshone Falls, as provided in Paragraph 21 of the contract of June 15, 1923, between the United States and the Company. In 1931, the lowest water years of record, a minimum saving of 150,000 acre feet would have been effected by this plan. In normal water years the saving which can be made out of this 255,000 acre feet will approximate 200,000 acre feet or more.

In addition to the above, a further saving of water will result when the Company furnishes to the Minidoka Project its winter power and energy in the amount stated in the proposal. This power and energy is for the purpose of making up the deficiency in Minidoka power plant generation when the water passing through that plant is decreased and is in addition to that power which can be generated at that plant with the amount of water required by the canals diverting at Milner Dam, and the amount of water to make said total flow at the head of Shoshone Falls.

Taking the lowest water year of record; to-wit, 1931, the saving in that year, operating under this proposal, would have effected a total conservation of approximately 300,000 acre feet.

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Conservation of Water

This proposal is based on saving at least as much water as can be saved by the proposed Government plant and unit at American Falls and has this advantage that it can be placed in operation immediately. It definitely makes available for conservation 255,000 acre feet of water in the Company's secondary storage capacity in the American Falls reservoir, less the release to make the total flow at the head of Shoshone Falls, as provided in Paragraph 21 of the contract of June 15, 1923, between the United States and the Company. In 1931, the lowest water year of record, a minimum saving of 150,000 acre feet would have been affected by this plan. In normal water years the saving which can be made out of this 255,000 acre feet will approximate 200,000 acre feet or more.

In addition to the above, a further saving of water will result when the Company furnishes to the Minidoka Project its winter power and energy in the amount stated in the proposal. This power and energy is for the purpose of making up the deficiency in Minidoka power plant generation when the water passing through that plant is decreased and is in addition to that power which can be generated at that plant with the amount of water required by the canals diverting at Milner Dam, and the amount of water to make said total flow at the head of Shoshone Falls.

We believe the saving in water by operating under this proposal will have the effect of conserving all the water which may be conserved by the construction and operation of the proposed Government plant and unit at American Falls.

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Power Supplied to the Minidoka Project.

The Company proposes to furnish from its American Falls power plant, or from its interconnected system, winter power up to 140% of the energy generated at the Minidoka plant, when not used for increased air heating; and in so doing will accomplish what a Government plant at American Falls will accomplish, including the provision for the present and future power uses and demands on the Minidoka Project. This supply of power, with the additional standby service up to 3,000 kilowatts, will protect the Project in the winter delivery of energy to its customers.

The proposal to furnish the Minidoka Project's increased demand for summer power at 3½ mills per kilowatt hour delivered at Minidoka gives the Project the advantage of purchasing power for their increased summer demands at the times and in such amounts as required without the necessity of operating an additional plant or carrying a large new plant investment over a period of years, or until such time as the proposed new plant would be loaded to a point where the average cost per kilowatt hour generated by it is comparable to the cost of the power purchased from the Company at 3½ mills per kilowatt hour.

In 1933 Minidoka Project purchased from the Company a peak demand of 969 kilowatts. This demand was used during short durations of time, and consequently kilowatt hours purchased were on a very low load factor basis, namely 10% for the six (6) summer months, as the energy purchased was to take care of only those peaks caused by the commercial power and lighting load, which were in excess of the Minidoka power plant's capacity. It is therefore reasonable to assume that when the project in 1934 requires a peak supply of approximately 1,700 kilowatts, as is estimated, the load factor during that year, although some-

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what improved, will still be low, inasmuch as the variations in demand will again be the result of commercial power and lighting peaks. It has been assumed that after 1934 the Project's additional irrigation pumping requirements will not be large, therefore during the years up to 1944 the larger portion of the increases will result from increased commercial power and lighting loads, and the variation in and the extent of peaks will, no doubt, remain more or less constant. If the peak demand of the Minidoka Project increases proportionately with the increased kilowatt hours as estimated, the Project would set up a peak demand in the year 1943 of 16,600 KW, of which 10,400 KW could be supplied from the present Minidoka power plant and a peak demand on the proposed Government unit at American Falls of approximately 6,200 KW, with a summer load factor of 30%. The estimate of kilowatt hours required during the summer months, together with the comparative costs, if purchased from the Company or if supplied from a Government plant installed at American Falls, are shown on the following charts and tabulations.

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MINIDOKA PROJECT POWER STUDY

Typical Summer Day Load Curve
Composite of the average of three days
7.21 - 7.25 - 8.23. 1933.

Idaho Power Company
Boise Idaho

Nov. 1933 ZA 3412

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(white print)

"This Daily Summer Load curve for the year 1933 was prepared from information furnished by Reclamation officials at Minidoka. The 1934 kwh incease was estimated from known pumping increase, plus estimated commercial power and lighting increase of 10%. Years 1935 to 1943, inclusive, are estimated on basis of 10% annual increase in commercial power and lighting, plus 50 kw per year additional pumping. "

MINIDOKA PROJECT POWER STUDY
Minidoka Project Average Daily Summer Load
Year 1933 Actual
Year 1943 Estimated

Idaho Power Company
Boise Idaho

Nov. 1933 ZA 3413

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MINIDOKA PROJECT POWER SYSTEM
POWER REQUIREMENTS, APRIL TO SEPTEMBER, INCLUSIVE

Year	Irrigation kwh	Commercial kwh	Total Load kwh	Requirements from I.P.Co. kwh
1923	23,034,000	4,396,000	27,430,000	
1924	21,882,000	4,237,000	26,119,000	
1925	27,922,000	3,968,000	31,890,000	
1926	28,655,000	4,194,000	32,849,000	
1927	27,267,000	4,566,000	31,833,000	
1928	29,245,000	5,103,000	34,348,000	
1929	26,232,000	5,538,000	31,770,000	
1930	28,379,000	5,805,000	34,184,000	
1931	29,839,000	6,158,000	35,997,000	
1932	29,616,000	5,105,000	34,721,000	187,000
1933	34,000,000	5,615,000	39,615,000	434,000
1934	36,500,000	6,176,000	42,676,000	1,000,000
1935	36,680,000	6,794,000	43,474,000	1,230,000
1936	36,860,000	7,473,000	44,333,000	1,630,000
1937	37,040,000	8,220,000	45,260,000	2,170,000
1938	37,220,000	9,042,000	46,262,000	2,870,000
1939	37,400,000	9,946,000	47,346,000	3,680,000
1940	37,580,000	10,941,000	48,521,000	4,630,000
1941	37,760,000	12,035,000	49,795,000	5,700,000
1942	37,940,000	13,238,000	51,178,000	6,890,000
1943	38,120,000	14,562,000	52,682,000	8,200,000

Note: 1923 to 1931, inclusive, taken from Project records, with Commercial KWH apportioned for summer months.

1932 is actual project records.

1933 to 1943, inclusive, are estimated.

This daily summer load tabulation for the yer 1933 was prepared from information furnished by Reclamation officials at Minidoka. The 1934 kwh increase was estimated from known pumping increase, plus estimated commercial power and lighting increase of 10%. Years 1933 to 1943, inclusive, are estimated on basis of 10% annual increase in commercial power and lighting, plus 50 kw per year additional pumping.

(Further increase in pumping load after 1934 not included in above tabulation. Ed.)

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MINIDOKA PROJECT POWER STUDY

Project Power Requirements

April to September
for years 1923-1943
Inclusive
Idaho Power Company
Boise Idaho

Nov. 1933

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COST OF POWER UNDER THIS PROPOSAL

During the summer months April to September, inclusive, of 1934 it is estimated that the Minidoka Project will require 3,061,000 kilowatt hours in excess of the kilowatt hours generated by the Minidoka plant during the summer months of 1933. Of these kilowatt hours, 2,061,000 can be supplied from the Minidoka plant making it necessary to purchase approximately 1,000,000 kilowatt hours from the Company which will cost at 3½ mills per kilowatt hour, a total of $3,500. This does not take into consideration the fact that the project will be able to repay on a two to one basis a portion of these kilowatt hours taken from the Company.

The estimated additional kilowatt hours required for the years 1935 to 1943 inclusive, being based on an annual increase of 10 per cent for the commercial power and lighting loads plus an increase of 50 kilowatts per year for additional pumping, would seem to be on a higher basis than may reasonably be expected to occur and considerably higher than the average rate of increase heretofore experienced. Based on these estimates, in the year 1943 the Project will require 13,067,000 more kilowatt hours than the Minidoka plant generated in the year 1933; but in 1943, because of greatly improved load factor on the present Minidoka plant, it will be able to supply 4,867,000 KWH of this increased load, requiring a purchase from the Company of the balance which amounts to 8,200,000 kilowatt hours. The cost of the 8,200,000 kilowatt hours at 3½ mills per kilowatt hour will amount to $28,700 for the year 1943.

For the 10-year period, 1934 to 1943 inclusive, the Project will

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require, based upon these estimates a total of 38,000,000 kilowatt hours more than the Minidoka plant will be able to supply, which will cost the Project, if purchased from the Company under this proposal at 3½ mills per kilowatt hour, a total of $133,000.00 for the 10-year period, or an average of $13,300.00 per year.

Cost of Power from Government Plant at American Falls.

A 7500 kw Government plant at American Falls, if constructed, would cost approximately $1,000,000.00, and would have an annual repayment and operating cost of $40,000.00, which annual cost does not take into consideration any other item of expense usually included in such cost. This would cost the Project for the year 1934 $40,000.00 for the 1,000,000 kilowatt hours, which amounts to 40 mills per kilowatt hour as compared to power purchased under this proposal at 3½ mills per kilowatt hour. In 1943 the cost of the 8,200,000 kilowatt hours required with the same annual cost of $40,000.00 would average 4.88 mills per kilowatt hour as compared to power purchased under this proposal from the Company at 3½ mills.

From 1934 to 1943, inclusive, with the project requiring 38,000,000 more kilowatt hours than could be supplied from the Minidoka plant, the cost of thesekilowatt hours from the proposed American Falls plant would be $400,000.00, an average of 10.5 mills per kilowatt hour.

Comparison of Total Costs Over a 10-year Period.

If power is generated at a new Government plant at American Falls the cost will be $400,000.00. If power is purchased under this proposal, it will cost $133,000.00, resulting in a saving to the Project over this 10-year period of $267,000, being an average of $26,700.00 per year.

The above costs are detailed and reflected in the tabulation shown on the following page.

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MINIDOKA PROJECT POWER SYSTEM
COST OF PURCHASED POWER COMPARED TO
COST OF POWER FROM GOVERNMENT PLANT BUILT AT AMERICAN FALLS

Year	Additional *** Annual Kilowatt Hours Required	Annual Cost of Power Purchased From I.P.Co.	Annual Cost* ** of Power From Government Plant at American Falls
1934	$1,000,000	$ 3,500.00	$ 40,000.00
1935	1,230,000	4,305.00	40,000.00
1936	1,630,000	5,705.00	40,000.00
1937	2,170,000	7,595.00	40,000.00
1938	2,870,000	10,045.00	40,000.00
1939	3,680,000	12,880.00	40,000.00
1940	4,630,000	16,205.00	40,000.00
1941	5,700,000	19,950.00	40,000.00
1942	6,890,000	24,115.00	40,000.00
1943	8,200,000	28,700.00	40,000.00
TOTAL	38,000,000	$133,000.00	$400,000.00

* Cost of power from American Falls plant estimated as follows:

Estimated cost of 7,500 kw plant at American Falls - - - - - - - - - - - - -	$1,000,000
Annual repayment cost on 40-year basis	25,000
Annual operating expense- - - - - - - -	15,000
Total Annual Cost- - - - -	$40,000

** The annual cost of power from Government plant at American Falls shown above is based solely on the repayment of $1,000,000 during a 40-year period, plus the estimated annual operating expense of $15,000, and does not take into consideration any other item of expense usually included in such cost.

*** The additional annual kilowatt hours required estimated on basis of 10% annual increase in commercial power and lighting are considerably higher than the average rate of increase heretofore experienced.

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Co-ordinated Operation of Respective Plants.

The co-ordinated operation of the Minidoka plant, within practicable limits, with those of the Company will make possible the maximum conservation of water at American Falls for summer irrigation purposes as this would permit of the full use of the Company's run of river plants during the light winter load periods, making possible a maximum conservation of stored water at American Falls.

Air Heating Requirements.

At the present time a considerable portion of the kilowatt hours generated at the Minidoka plant during the winter months is used to supply air heating service, with a very low gross return per acre foot to the Project for the water used in the generation of these kilowatt hours. Generally speaking, the value of water where it can be stored for irrigation use is considerably in excess of the gross return now received by the Minidoka Project for the generation of power for air heating purposes, and no doubt the Minidoka Project can arrenge to dispose of any water that may be saved as a result of not increasing this air heating load, and eventaully decreasing the amount that is now being sold for that purpose, at a net return somewhat in excess of the present. Serious consideration should be given to the relative value of water for irrigation pumping as compared to its value for generating power for air heating purposes.

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It is our earnest desire to make this a clear, clean-cut proposal. And in the consideration of this proposal, which of course is lacking the complete details of a formal contract, we trust the Bureau will feel free to call upon us for any information which may clarify any uncertainty or obscurity in thought or intention encountered. Our understanding is that this proposal will receive your study and consideration, with the opportunity afforded at an early date for a further conference.

Very truly yours

IDAHO POWER COMPANY

By K. M. ROBINSON

Vice-Pres. & G.M.

AF012430

Exhibit Q

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 R

UPPER SNAKE RIVER BASIN

Wyoming - Idaho - Utah - Nevada - Oregon

Volume I

Summary Report

70

U.S. DEP'T. OF THE INTERIOR
BUREAU OF RECLAMATION
Region 1 Boise, Idaho

1961

CORPS OF ENGINEERS
U.S. ARMY ENGINEER DISTRICT
Walla Walla, Washington

B1_IPC0018218

AMERICAN FALLS POWERPLANT

American Falls Powerplant would be located on the right bank of the Snake River approximately 200 feet downstream from the existing American Falls Dam. The considered site is about 1/2-mile southwest of the town of American Falls, Power County, Idaho. The construction of a 30,000-kilowatt powerplant was anticipated at the time American Falls Dam was constructed (1925-1927), in that four capped penstocks were imbedded in the right abutment of the dam.

In December 1926, Congress appropriated funds for initial construction of American Falls Powerplant, but construction was postponed when it was concluded that such funds were not sufficient for completion of the foundation structure and one generating unit. The Interior Appropriation Act for fiscal year 1929 provided that the unexpended funds plus additional funds should remain available for construction of the powerplant. However, the 1930 Appropriation Act provided that these funds should be made available for construction of the Gravity Extension Unit of the Minidoka Project.

In 1949 a financial study was made of the feasibility of constructing the powerplant. Hearings were held in August 1949 on H.R. 5506, 81st Congress, 1st Session, which included authorization of American Falls Powerplant. This bill was not enacted during that session, but was reintroduced in 1950 and was enacted into Public Law 864, 81st Congress, 2nd Session, approved September 30, 1950. A definite plan report on this authorized project was prepared in 1956. The American Falls Powerplant authorizing legislation contained a limitation of $6,600,000 for the cost of the 30,000-kilowatt plant. At mid-1959 price levels, the plan is estimated to cost about $10,130,000. Consequently, it would be necessary to obtain a reauthorization on the new cost basis if the development were to be constructed.

American Falls Reservoir is operated in coordination with Jackson Lake, Island Park, Palisades, and Lake Walcott Reservoirs to supply irrigation water to several hundred thousand acres of land in the Upper Snake River Basin. The reservoir would also be operated in coordination with any additional storage projects or water-supply facilities that might be constructed upstream. Releases from American Falls Reservoir for downstream irrigation and power requirements would be the source of water for operating the American Falls Powerplant.

A right to store in American Falls Reservoir is contained in license granted by the Idaho Department of Reclamation, with a priority of March 30, 1921. This water license was later confirmed by Federal Court Decree in the Woodville Case. At the time the United States constructed American Falls Dam, it acquired from the Idaho Power Company the Island powerplant and the West Side plant, both located just down

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stream from the dam. Idaho Power Company retained and still operates a third powerplant located on the east side of the river downstream from the dam. The United States also acquired certain power and irrigation water rights with the intention to construct the 30,000-kilowatt American Falls Powerplant. These transactions with the Idaho Power Company are covered by Contract I lr-733, dated June 15, 1923. This contract is complex but in general the United States' rights under it are as follow:

(a) Summer Power Right - April 1 to October 31, inclusive, (Secondary to Idaho Power Company summer right). A right expressed in terms of a limitation or the average daily generation, with a maximum of 30,000 kilowatts. The quantity of water that may be used for power purposes is also specified, but is not a limiting factor.

(b) Winter Power Rights - November 1 to March 31, (Primary to Idaho Power Company winter rights). The rights to generate such power and energy as is needed supplemental to the Minidoka Powerplant generation to satisfy the requirements of a load at Minidoka having a 10,000-kilowatt half-hour peak.

In 1934, the United States and the Idaho Power Company entered into a contract in which it was agreed that the United States would not construct a powerplant at American Falls, and in return, the power company would release control of its 255,000 acre-feet of storage in American Falls Reservoir to the United States. This contract was abrogated by contract of December 15, 1950 between the United States and Idaho Power Company. This 1950 contract re-established the provisions of the 1923 contract.

The authorized features of the American Falls Powerplant include the plant, switchyard, and a transmission line. Under a 1956 contract with the Idaho Power Company, the company agreed to provide the necessary transmission facilities for the North Side Division of the Minidoka Project. Transmission lines are not now included in the project facilities, in anticipation that a similar arrangement could be agreed upon if the powerplant were to be constructed.

The powerplant is designed as a semioutdoor type reinforced concrete structure. Three penstock lengths vary from 200 to 250 feet and would extend from the presently capped penstocks in the dam to the powerplant. Fixed-wheel gates would be installed at the inlets to the penstocks on the upstream face of the dam. Location and layout details of the powerplant are shown on Plate 21.

Determination of the power production at the American Falls Powerplant under the condition of the future level of development

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contained in this report was obtained by passing releases from American Falls Reservoir necessary for other purposes through the future and existing plants at American Falls Dam. The Idaho Power Company Plant does not utilize the full head developed by American Falls Dam and with minor exceptions more efficient use of the water could be made by passing it through the future plant up to the limit of its capacity. In this regard, it would seem that the most effective way of developing the power potential at American Falls Dam would be with a single, future, modern plant in place of the existing and authorized plants. However, this has not been analyzed. The 30,000-kilowatt plant included in this investigation could utilize all of the water in the October through March period, except for occasional high flows. Both the present plant and the future plant would operate during the May to September period. Except in a few months of the study period, all of the water passing American Falls during the irrigation season could be utilized by the two plants.

It has been assumed that operating arrangements could be worked out which would permit the use of the water in the most efficient way. On this basis, power production at American Falls from the new development would be as follows:

Average annual generation	--	138,000,000 kilowatt-hours
Dependable capacity	--	28,100 kilowatts

In dry years a maximum amount of water is retained in upstream storage so a minimum of winter water passes American Falls Dam. During the irrigation season large amounts are released for irrigation use below American Falls Dam. As a result, there would be large seasonal but comparatively little annual firm power production attributable to the future plant.

The Fish and Wildlife Service investigation of the project indicates that no effects are expected on either fishery or wildlife. Their recommendations for mitigation or enhancement considerations are for minimum sustained release of at least 1,000 cubic feet per second and to minimize fluctuation of releases. A summary of the costs and benefits associated with the development, and a derivation of benefit-cost ratio over a 100-year period of analysis follows:

Construction cost	$10,130,000
Annual costs	
Equivalent cost of the net Federal investment	290,000
Operation, maintenance, and replacement costs	155,000
Total annual costs	$445,000

B1_IPC0018221

Potential Projects

P[illegible]fits $835,000

B[illegible] ratio ..... 1.9 to 1

C[illegible] power development that would make a fuller use of hydroelectric potentials at American Falls Dam, in all likelihood, would continue to be less than costs for alternative power produced from a thermal source. On this basis, it would seem that the American Falls potential should continue under long-range consideration. However, presently scheduled studies regarding enlargement of American Falls Reservoir may indicate that this development should be reconsidered as part of that plan.

B1_IPC0018222

Exhibit S

Mr. Inman

IDAHO POWER COMPANY
BOISE, IDAHO

Boise, Idaho
June 4, 1948

Power Requirements for Pumping
in the Vicinity of Rupert

General Office

Mr. T. R. Rosch

In a news item published in the Jerome "North Side News" of May 27, 1948 Mr. Lynn Crandall, Watermaster of the Upper Snake River and a very influential irrigation authority of Idaho, is quoted as making the following statement relative to the possible power requirements for pumping in the vicinity of Rupert:

"This, however, will require the construction of a government power plant, perhaps at American Falls, or possibly using Palisades power."

In view of the demands for the relatively small amount of Palisades power which will be available, it seems quite probable that the American Falls site would be the logical place for the government to obtain this power. The dam has been constructed and the cost for such power will be comparatively small. The government has, by contract with Idaho Power Company, certain rights for power development at this site and has penstock openings through its dam suitable for a 30,000-kw power plant.

It occurs to me that your attention should be called to the effect of such a power plant on the power production of Idaho Power Company at American Falls.

The contract between the United States and Idaho Power Company, dated June 15, 1923, sets forth the priority of water rights at American Falls as between the two, as follows:

I.P.Co. Primary Right:

400	c.f.s.	April 1, increasing uniformly to
2500	"	May 1
2500	"	May 1 to September 15, inclusive, decreasing uniformly after September 15 to
100	"	October 31
0	"	November 1 to March 31, inclusive, except certain Primary and Secondary storage rights.

Above rights are prior to government rights.

Government Secondary Right:

1500	c.f.s.	April 1, increasing uniformly to
5000	"	May 1 " " "
6000	"	June 1
6000	"	June 1 to September 15, inclusive, and decreasing uniformly after September 15 to
1500	"	October 31

These rights are secondary to Idaho Power Company's primary rights as shown above.

B1_IPC0013881

I.P.Co. Tertiary Right:

Right to use all summer water passing American Falls in excess of the above Primary and Secondary rights, up to the capacity of the presently installed power plant. (Present plant can utilize a maximum of about 8500 c.f.s.)

I.P.Co. Storage Rights:

The first 300,000 acre-feet of storable water flowing into the American Falls reservoir after October 31,

for the purpose of storing this water for the Company's Primary storage space of 45,000 acre-feet and 255,000 acre-feet of Secondary storage space. Secondary storage space is the unused space of others which not used by its owners.

Water stored in the Company's Primary storage space may be demanded at any time but must be used by November 15 of the following year or forfeited.

Water stored in Secondary storage space may be drawn past American Falls at any time it can be identified past Milner dam only in excess of prior rights and amounts, thus amounts passing American Falls in excess of the amounts permitted to pass Milner may be lost to others' credits. This water stored in Secondary space must be reduced from 255,000 acre-feet to 60,000 acre-feet by April 1 and to zero by June 10, or whenever the reservoir fills.

In our contract with the United States of October 1, 1934 we relinquished certain of our Secondary storage rights to the government pending a decision of the United States to put in a power plant at American Falls. Should the United States construct such a plant the Power Company may cancel the 1934 contract. However, when the Falls-Minidoka dam is constructed there is certain to be a great deal of pressure put on the Company to give up its Secondary storage rights for the benefit of irrigation.

At present, with no government power plant at American Falls, the Power Company has the right to use all water passing that point. Should the government construct the power plant, which they have a right to do, the Power Company would lose the right to use any winter water passed for the above plant, except that drawn from its storage space. Further, the Power Company will have primary summer rights for water sufficient to produce only about 7500 kw (plant capacity is 27,000 kw). Before the Power Company will have any further summer rights the government will be able to generate 38,000 kw. However, during the height of the summer irrigation there would usually be sufficient water for the Power Company to generate about 7500 kw additionally making a total Company output of 15,000 kw.

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Should the government fully develop its rights at American Falls, then Idaho Power Company's production at American Falls will be cut to considerably less than half what we now develop at this point. This is a very important matter to Idaho Power Company.

Very truly yours,

B. C. Russell
General Superintendent

BCR:HM
CC - Mr. A. C. Inman

COPY

B1_IPC0013883

Exhibit T

01-2064

4118 1118

State of Idaho

License and Certificate of Water Right

Water License No. B-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 R. E. STOUTEMYER, Disgriet 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. B-269 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 1,800,000 acre feet per annum 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. B-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 SE¼ of 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 in 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

Water License No. R-269

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, was issued thereunder on July 13, 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 48;

The right hereby confirmed dates from March 30, 1921, 19;

The Point of Diversion is located in the SW¼ ¼ SW¼ ¼, 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.

WITNESS the seal and signature of the Commissioner of Reclamation, affixed at Boise, Idaho, this 9th day of July, 19 42

E.V. HERRG.

Commissioner of Reclamation

(SEAL)

01-2064

Exhibit U

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Reclamation

Boise and Minidoka Projects, Idaho

Contract with the IDAHO POWER COMPANY for Sale of Electric Power and Energy and for Service to Loads of United States or its Customers

THIS CONTRACT, made this 15th day of December, 1950, in pursuance of the Federal Reclamation Laws, between THE UNITED STATES OF AMERICA, hereinafter called the United States, represented by the officer executing this contract, his duly appointed successor, or his duly authorized representative, hereinafter referred to as the contracting officer; and the IDAHO POWER COMPANY, a corporation duly organized and existing under and by virtue of the laws of the State of Maine and authorized to do business in the State of Idaho, its successors and assigns, hereinafter called the Company,

WITNESSETH, That:

2. WHEREAS, the Company is engaged as a public utility, subject to the jurisdiction of the regulatory authorities of the states of Idaho, Oregon and Nevada, in the business of generating, transmitting and distributing electric energy in and to various parts of said states;

3. WHEREAS, the United States has constructed and is now operating, through the Bureau of Reclamation, hydroelectric powerplants at Black Canyon Dam on the Payette River, at Diversion Dam on the Boise River, and at Minidoka Dam on the Snake River, and is now constructing a powerplant at Anderson Ranch Dam on the Boise River, all in the State of Idaho, and power generated at such plants is intended by the United States to be marketed in accordance with the provisions of the Federal Reclamation Laws;

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Reclamation

Boise and Minidoka Projects, Idaho

Contract with the IDAHO POWER COMPANY for Sale of Electric Power and Energy and for Service to Loads of United States or its Customers

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4. WHEREAS, the United States, through the Corps of Engineers, is now constructing Lucky Peak Dam on the Boise River for the main purpose of controlling floods but which, when completed, will also permit an increase in firm electric power generation at the Anderson Ranch Dam powerplant; and

5. WHEREAS, the United States and the Company mutually desire, through the interconnection of the powerplants of the United States with the Company's system, to permit the fullest practicable utilization of the Federal powerplants consistent with the conservation of water for irrigation use and to make the benefits of such interconnection available to power consumers and water users; and, in order to carry out this desire, wish to provide for the supply of power and energy over the Company's system to certain loads of the United States and its customers and for the exchange and purchase of power and energy between the parties on terms other than are provided in the existing contracts between the parties;

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the parties hereto agree as follows:

Definitions

6. The following terms, wherever used in this contract, shall have the following respective meanings:

"Federal powerplants" shall mean the Federal powerplants at Anderson Ranch, Black Canyon, Diversion and Minidoka dams.

"Federal Reclamation Laws" shall mean the Act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplemental thereto.

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"Primary energy" shall mean the kilowatthours delivered by the United States into the Company's system from the Federal powerplants under the provisions of subarticle 7(a) during each year of the contract term, when and as scheduled by the Company.

"Secondary energy" shall mean that energy which, in the judgment of the United States, can be produced at the Federal powerplants in any year in excess of 225,500,000 kilowatthours,--being the amount which could be supplied in a critical water supply year like that of the water year ending September 1932, assuming that amount to be distributed through the year in such a manner as to meet the primary energy requirements, as above defined, and the amount of energy required to supply loads of the United States directly from the Federal powerplants.

"Year" shall mean the twelve-month period ending October 31.

Power and Energy to be Supplied by the United States

7. (a) The United States shall generate and deliver, and the Company shall receive and accept, from the Federal powerplants into the Company's system, 126,142,500 kilowatthours of primary energy per year during the contract term as follows:

(1) 123,405,000 kilowatthours of such primary energy, of which not less than 3,650,000 kilowatthours 1/ of

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1/ Calculated on the basis of a five-hour average daily peaking each month of 2,000 kilowatts.

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peaking energy shall be for the Company's own use, shall be made available as scheduled by the Company, but, except as set forth in article 10, the Company shall not schedule such power at a total rate from all Federal powerplants greater than 24,000 kilowatts between April 30 and September 1, than 23,000 kilowatts during the month of September, than 16,250 kilowatts between October 31 and April 1, than 19,500 kilowatts during the months of April and October; and, except as provided in article 10, the Company shall schedule the delivery of primary energy to it within the following maxima:

Not to exceed 48,207,000 kilowatthours between April 30 and September 1; 9,986,000 kilowatthours in the month of September; 49,806,000 kilowatthours between October 31 and April 1; 15,406,000 kilowatthours during the months of April and October of any year.

(2) 2,737,500 kilowatthours 2/ of such primary energy shall be made available for the Company's own use, as scheduled by the Company. On not less than two (2) years' written notice given to the Company, the amount of primary energy delivered to the Company

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2/ Calculated on the basis of a five-hour average daily peaking each month of 1,500 kilowatts, which capacity and energy are in addition to that specified in paragraph 7(a)(1).

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for its own use under this paragraph (2) may be reduced either by the increase in the requirements of loads served directly by the United States or, as provided in subarticle 11(d), by the addition of loads to be served over the Company's system.

There is attached hereto, as exhibit A, a table entitled "Boise and Minidoka Projects - Illustration Based on Estimated Distribution of Energy - 1956" from which the foregoing figures in this article and the figures in article 11 were derived. The figures in the exhibit, being estimates only, are appended only by way of explanation, and are not intended to impose limitations or requirements beyond those imposed by the figures set forth in the text of the contract.

(b) The United States shall generate and deliver, and the Company shall receive and accept, from the Federal powerplants into the Company's system, secondary energy as follows:

(1) All secondary energy available from the Federal powerplants and which, in the judgment of the United States, can be safely supplied from those plants to the extent of the first 28,500,000 kilowatthours of secondary energy during the months of November through February and July through October of each year, or to the extent of the lesser amount to which the 28,500,000 kilowatthours may be adjusted in accordance with (a)(2) of this article or subarticle 11(d) by the addition of loads therein provided for.

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(2) All secondary energy in excess of 26,500,000 kilowatthours during each year made available by the United States and that the Company desires to purchase and accept under the terms hereof.

Frequency, Voltages and Points of Delivery

8. The power and energy to be generated and delivered by the United States to the Company, as provided in this contract, shall be developed as three-phase alternating current at a nominal frequency of 60 cycles per second, and shall be provided at the following nominal voltages and points of delivery:

(a) 138,000 volts, at the point at which the Company's 138,000-volt circuit connects with the 138,000-volt circuit from the Federal substation near Mountain Home, Idaho;

(b) 69,000 volts, at the point at which the Company's 69,000-volt transmission line connects with the Federal 69,000-volt circuit near Emmett, Idaho;

(c) 138,000 volts, at the point at which the Company's 138,000-volt circuit connects with the Federal substation at the Minidoka powerplant;

(d) 23,000 volts, at the point at which the Company's 23,000-volt circuit connects with the Federal 23,000-volt circuit at or near Barber Dam in Idaho;

and at such other voltages and points as may be mutually agreed on in writing.

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Interruptions or Reductions in Service

9. (a) The electric service to be provided the Company under article 7 and the electric service to be provided the United States under article 11 will be furnished continuously except for (1) interruptions or reductions due to uncontrollable forces, as herein defined; (2) interruptions or reductions due to operation of devices installed for power system protection; and (3) temporary interruptions or reductions which, as determined by each party with respect to its own facilities, are necessary or desirable for the purposes of repairs, replacements, installation of equipment, investigation and inspection, or nonscheduled maintenance.

(b) In the event of brief interruptions or reductions of power deliveries from the Federal powerplants to the Company's system excusable under (a) of this article, the Company, if and so long as it determines that it has power and energy available therefor, will continue to deliver power and energy to loads of the United States and its customers under the provisions of article 11 at such price as may be agreed upon in writing between the contracting officer and the Company. If the Company determines that it does not have power and energy available during such interruptions or reductions, it will, upon request by the contracting officer, endeavor to make arrangements for securing power from adjacent connected sources and make it available to the United States at the incremental cost of providing such service; provided, that the arrangements for the temporary service shall be authorized by the contracting officer before the service is initiated, subject to the right of the Company to cancel or discontinue such arrangements at any time.

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(c) All generating units in the Federal powerplants shall be maintained in commercial operating condition by the United States, excluding periods for maintenance, repairs, replacements, installation of equipment, or investigation and inspection, during the contract term. Outages of equipment will be held to the shortest possible duration, and, except in case of emergency as determined by the contracting officer, will be permitted only after giving the Company reasonable advance notice thereof, and the United States will endeavor to coordinate such periods with the Company's system maintenance program.

Scheduling of Generation; Temporary Storage of Water for Power Production in Federal Reservoirs

10. (a) Within the maximum yearly quantity of primary energy provided in article 7 but without regard to the kilowatt and kilowatthour or other limitations of that article, the Company, for the purpose of achieving the most efficient and flexible utilization of productive capacity, may, within the limits of this article, (1) provide for the temporary storage of water in Federal reservoirs, and (2) schedule generation of primary and secondary energy by the Federal powerplants, both in such manner that it considers desirable to meet the general power requirements of the Company's market area, including the requirements of the United States and its customers.

(b) Temporary Storage of Water. Beginning with the effective date of this contract, the Company may schedule for storage in Anderson Ranch and Cascade reservoirs for release for power production in subsequent months, water to which the Company is entitled and such other water

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as the contracting officer determines to be available for that purpose, subject to the following limitations:

(1) No water shall be so stored that is required to be released to meet the requirements of prior rights downstream for irrigation or other beneficial consumptive uses.

(2) No water shall be so stored in Anderson Ranch Reservoir if such storage, together with other water being stored, would result in the encroachment on space in that reservoir that is required to be held vacant for flood control purposes under the terms of the operating plan set forth in exhibit B. Waters so stored in Cascade Reservoir shall be released if the contracting officer, after consultation with the Company, determines that space in that reservoir is required for flood control purposes.

(c) Scheduling of Generation. (1) Both for the purpose of making use of temporary storage available to the Company under (b) of this article and to make use of other water available for power production at the Federal powerplants, the fullest practicable use shall be made of the Federal powerplants, to obtain the most valuable electrical energy therefrom, as requested by the Company, within these limitations and on these conditions:

(i) No water, except that temporarily stored as provided in (b) of this article, will be released for the

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production of power at Federal powerplants except as the release of water is required by reason of prior rights downstream or it is determined by the contracting officer that the release may be made consistently with the objective of conserving, to the greatest extent practicable, water for irrigation uses.

(ii) Water temporarily stored as provided in (b) of this article may be released whenever requested by the Company, except that no releases shall be made that will result in the loss of water for irrigation purposes and in no case may such water be carried beyond an irrigation season if its release is required to satisfy prior rights to the use of stored waters for irrigation purposes.

(iii) All releases ordered by the Company shall be limited at any time by the safe operating capability of the various units in the Federal powerplants as determined by the United States and to the capability of the Company's system to receive and utilize such energy as determined by the Company, and, except as approved by the contracting officer, power shall not be scheduled so as to require the operation of any individual generating unit in any Federal powerplant at less than thirty per cent (30%) of its

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capability, nor shall the production at the Black Canyon plant be at less than 1,000 kilowatts at any time.

(2) There are attached hereto as exhibit C and incorporated by reference herein operating criteria to govern both the storage and release of water in keeping with the provisions of this article. Within the limits of this article, however, these criteria may be revised from time to time by agreements in writing between the contracting officer and the Company.

(d) The Company shall furnish at all times, except for interruptions or reductions within the provisions of article 9, power and energy to satisfy such requirements of the United States and its customers as could have been met by the United States from the Federal powerplants but for the operations of the Company under the provisions of this article.

Supply of Power and Energy for the United States and its Customers

11. (a) The Company, to provide service to the United States and its customers out of power and energy to be made available to the Company under this contract, shall supply the United States or its customers power and energy to the extent and on the terms set out in this article.

(b) Except as subsequently modified pursuant to the provisions of (d) of this article, the maximum demand of the United States, as defined in (g) of this article, and the maximum amount of energy per year required to be delivered by the Company hereunder shall not exceed the following:

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Period	Maximum Demand (Kilowatts)	Maximum Energy (Kilowatthours)
April 30 to September 1	20,500)	
September	19,500)	52,493,000
October 31 to April 1	13,100	43,824,000
April and October	16,400	13,574,000
		109,891,000

(c) The existing customers of the United States and the loads of each individual customer to be served by the Company hereunder are shown on exhibit D, these loads including, as part of the Minidoka Project load, the delivery of not to exceed a maximum demand of 2,000 kilowatts and the maximum energy per year of 6,000,000 kilowatthours for the North Side Pumping Division so long as such delivery can be made within the limits of (b) of this article and only during an interim period until the availability of power from the American Falls powerplant and the making of permanent arrangements by the United States for delivery of power on the North Side Pumping Division. Delivery of power and energy to the North Side Pumping Division shall be made during such interim period to the ten (10) North Side wells listed in exhibit D at pump voltage (2,300 or 440 volts), the Company to furnish the necessary transformation equipment. Within the limits set forth in (b) of this article, and within the limits of excess capacity at any time existing in the Company's system as determined by the Company, the amount of power and energy to be delivered to the loads specified in exhibit D may be increased up to a maximum of ten per cent (10%) of the amounts so specified for any individual load.

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(d) In addition to the loads covered by (c) of this article, but within the number of kilowatthours and other limitations and on the conditions specified in paragraph 7(a)(2) modified as hereinafter provided, the United States, by means of the Company's system, if there is available excess capacity in the system as determined by the Company, (i) may serve additional loads of its own, (ii) may contract to deliver power and energy to serve the irrigation and incidental operation and maintenance requirements of water users organizations, or (iii) may serve the requirements of customers entitled to preference in the purchase of power and energy under the Federal Reclamation Laws. Whenever such additional loads are to be served by the United States under this article or directly in accordance with paragraph 7(a)(2), there shall be:— a reduction in the amount of primary energy made available to the Company under the provisions of paragraph 7(a)(2); if the additional loads are to be served directly by the United States over its own facilities or are loads coming under item (i) or (ii) of this subarticle, a reduction of not to exceed a total of 2,750,000 kilowatthours in the amount of secondary energy made available to the Company under the provisions of paragraph 7(b)(1)[3/]; and appropriate adjustments of the maximum demand and maximum energy figures set forth in (b) of this article, taking account of an assumed transmission loss on energy delivered over Company facilities of four per cent (4%) for loads west of a north-south line through Glenns Ferry, Idaho, and seven per cent (7%) for loads east of said Glenns Ferry line. No additional load shall be served under this

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3/ See, by way of explanation, footnote 7 of exhibit A.

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subarticle except at 44,000 volts or such higher voltage as is available on the Company's system at or near the proposed point of delivery and except at a demand at any one point of delivery off the Company's system of 200 kilowatts or more; provided, that the contracting officer and the Company may agree on a smaller load limitation with respect to particular loads.

(e) The Company will deliver electric power and energy to the United States and its customers under this article at points of connection with the Company's system at which deliveries are now being made; and the Company will make at the expense of the United States whatever connections to the Company's system are agreed between the contracting officer and the Company to be necessary to make other deliveries coming within the provisions of this article.

(f) The Company shall not be responsible for supplying power and energy to the United States or its customers if power and energy are not made available hereunder to the Company by the United States for such purpose except as otherwise provided in subarticles 9(b) and 10(d), and shall not be liable for any claims, demands, causes of action or damages arising out of failure to supply power and energy in such cases.

(g) For the purpose of this article, the term "maximum demand" for any period shall mean the total of the maximum hourly integrated demands occurring during any month within the period at each of the delivery points from the Company's system to each of the loads of the United States, adjusted for lagging power factor under the provisions of subarticle 12(b); provided, that the maximum demands at the Minidoka

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powerplant shall not include those occurring during the periods from 9 p.m. to 9 a.m. daily or from 9 p.m. Saturday night to 9 a.m. Monday morning.

Power Factor

12. (a) The Company shall take power and energy from the United States at the locations designated in article 8 at such power factor as will best serve the Company's system at that point; provided, that the Company shall not intentionally impose any power factor on the system of the United States in such a way as to overload or impair the facilities of the United States, or interfere with the generation of energy for commitments of the United States to other customers served directly from the Federal powerplants.

(b) The United States shall take power and energy from the Company at the power factor which the loads of the customers of the United States impose on the Company's system; provided, that, if the average power factor of the load of any such customer at the time of said customer's maximum demand during any month should be less than 0.85 lagging at its point of delivery, the maximum demand of the United States at such point of delivery shall be adjusted by determining the maximum demand of the United States imposed by such customer for such month, and by increasing the measured kilowatts of demand by one per cent (1%) for each one per cent (1%) or major fraction thereof by which the average power factor is less than 0.85 lagging.

(c) The reactive load imposed on the Company's system by customers of the United States shall be carried by the Federal powerplants at all times when requested by the Company.

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Payment

13. (a) The Company shall pay the United States for power and energy and for the various related privileges accorded to it under this contract as follows:

(1) For power and energy and related privileges, exclusive of those covered by paragraphs (2), (3) and (4) below, for each full year, $129,000, to be paid in equal monthly instalments of $10,750, on or before the 20th day of the month following that for which it is payable, subject to adjustment as provided in (c) of this article; provided, that, if in any year by reason of interruptions or reductions coming within the provisions of article 9, or by reason of the addition of loads by the United States under paragraph 7(a)(2) or subarticle 11(d), the total amount of secondary energy as described in paragraph 7(b)(1) available to the Company is less than 28,500,000 kilowatthours, the total payment to be made under this paragraph shall be reduced by an amount equal to the deficiency in kilowatthours times $.00175.

(2) For primary energy made available to the Company under the provisions of paragraph 7(a)(2), $.006 per kilowatthour.

(3) For primary energy delivered to the Company pursuant to the provisions of paragraph 7(a)(1) for transfer

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to loads of the United States or its customers, but which energy is not required to meet such loads and is delivered to the Company, at the rate of $.0019 per kilowatthour. The kilowatthours to be paid for under this paragraph shall be the excess of kilowatthours that the Company is obligated to deliver to loads of the United States and its customers under the provisions of article 11 and for which energy is delivered to the Company, over the total amount actually delivered to the United States and its customers measured as provided in subarticle 14(b) less the excess of the actual kilowatthour generation for the year at the Minidoka powerplant over 83,320,000 kilowatthours. 4/

(4) For secondary energy delivered to and taken by the Company in any year in excess of 28,500,000 kilowatthours or in excess of the resulting lesser amount should the above 28,500,000 kilowatthours of secondary energy be reduced by withdrawal under the provisions of subarticle 11(d), and energy delivered to the Company pursuant to the provisions of paragraph 7(a)(1) not used to meet Minidoka Project loads and not required to be paid for under paragraph (a)(3) of this article because generation at

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4/ This figure represents the agreed estimate of generation at the Minidoka powerplant in a critical water year.

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the Minidoka powerplant for the year exceeded 83,320,000 kilowatthours, at the rate of $.001 per kilowatthour.

There shall be determinations as of the end of each year as to the amounts owed to the United States under paragraphs (1), (2), (3) and (4) above, and these amounts, less the amounts theretofore paid in monthly instalments under paragraph (1) above, shall be payable to the United States on or before the 20th day of December following the year for which the amounts are payable.

(b) The United States shall pay to the Company for the transfer and delivery of power and energy by means of the Company's interconnected system, for each kilowatthour delivered as provided in article 11 hereof measured at the point of delivery as follows:

(1) For the transfer and delivery of power and energy to loads with delivery points west of a north-south line through Glenns Ferry, Idaho, $.001 per kilowatthour.

(2) For the transfer and delivery of power and energy to loads with delivery points east of the Glenns Ferry line, $.0015 per kilowatthour.

(3) In addition to the charges under paragraphs (1) or (2) above and except as otherwise agreed in writing, in those instances in which loads coming within the provisions of subarticle 11(c) require service over lines of the Company having a voltage of less than

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44,000 volts, an additional charge of $.0023 per kilowatthour; provided, however, that this paragraph shall not apply to service to the ten (10) North Side Pumping Division wells as covered in paragraph (4) below.

(4) In addition to the charges under paragraph (2) above, an additional charge of $.002 per kilowatthour shall be made for the delivery of power and energy at pump voltage for the ten (10) wells on the North Side Pumping Division of the Minidoka Project as provided in subarticle 11(c).

(5) For power and energy secured and furnished by the Company for the United States during periods of brief interruptions or reductions of power deliveries from the Federal powerplants, in accordance with subarticle 9(b).

There shall be determinations as of the end of each month of the contract term as to amounts owed to the Company under (b) of this article and these amounts shall be paid to the Company on or before the 20th day of the month following that for which the amounts apply. Payments of amounts due under (b) of this article by the United States to the Company shall constitute full compensation for the transfer and delivery of power and energy for the United States over Company facilities in accordance with article 11.

(c) The payment to the United States under paragraph (1) of (a) of this article shall be reduced in the following circumstances:

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(1) In the event the United States fails for any reason, except because of interruptions or reductions within the scope of subarticle 9(a) or as the result of scheduling by the Company under article 10, to deliver the full amount of primary power and energy required to be put into the Company's system pursuant to subarticle 7(a) for the Company's own use and to provide service (with proper allowance for losses) to the United States and its customers.

(2) In the event the United States and its individual customers utilize power and energy in excess of the amounts specified in article 11 and exhibit D hereto as modified from time to time under the provisions of (d) of that article.

The amount of reduction by reason of the deficiency under (1) or the excess use under (2) above shall be a sum equal to the kilowatts of deficiency or excess each month times $1.50 plus the kilowatthours of such deficiency or excess times one cent. Adjustments under this article shall be made in connection with the monthly payment provided for in (a) of this article to be made by the Company following the end of the month affected by the adjustment. Nothing in this subarticle shall be construed to create or imply any obligation on the part of the Company to make up any such deficiency or to supply power and energy for any such excess use; and, in the event it appears that such deficiencies under (1) above or excess use under (2) above will be of long duration, the parties will negotiate with

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the objectives of meeting those problems by long-term contractual arrangements other than herein set forth.

(d) In view of the fact that the date of initial service under this contract will not coincide with the beginning of a year as defined in article 6 and the fact that on that date only one of the two initial generating units at the Anderson Ranch powerplant will be in service, the bills for service under this article for the period from the date of initial service through October 31, 1951, shall be appropriately adjusted by formulae to be worked out by the contracting officer and the Company, to reflect such partial year of service and the fact, to the extent that it existed during that period, that only one generating unit had been placed in service. For any additional period prior to the placing in operation of the second generating unit and for the period upon termination of the contract which constitutes a partial year of service under the contract, a like procedure shall be followed to accomplish appropriate adjustment of bills.

Measurement of Electric Power and Energy

14. (a) The electric power and energy delivered hereunder by the United States to the Company's system shall be measured in the powerplants of the United States by metering equipment to be furnished and maintained by the United States. When such electric power and energy is delivered on the high voltage side of any substation, but is measured on the low voltage side of such substation, the meter readings shall be decreased by two per cent (2%); provided, that meter readings at the Anderson Ranch powerplant will be adjusted in accordance with exhibit E

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attached hereto which exhibit shall be subject to change by mutual agreement of the contracting officer and the Company when changes of facilities of either party so warrant.

(b) The electric power and energy delivered to loads and customers of the United States over the Company's transmission system shall be measured at the voltage of the transmission line (or distribution line in case of delivery at distribution voltage as supplied to existing customers) from which it is delivered to the United States or its customers at or near the points of delivery of such electric power and energy, by metering equipment to be furnished and maintained by the United States. Power and energy delivered at any point or points of delivery, except on the North Side Pumping Division, may, at the option of the United States, be measured on the low voltage side of the substation at or near said point of delivery, in which event the meter readings at said point of delivery will be increased by two per cent (2%) in order to compensate for substation losses. With respect to service furnished to the ten (10) North Side Pumping Division wells, meter readings shall be increased by nine per cent (9%) to cover distribution and stepdown transformation losses. With respect to service furnished the Gem Irrigation District pumping plant during the months of November to March, inclusive, under the present arrangements for supplying such service, the meter readings for the District's pumping plant shall be increased by an amount of sixty (60) kilowatts times the number of hours of use in each such monthly billing period in lieu of the two per cent (2%) adjustment factor provided for above. If the present arrangement for serving the

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Gem District's pumping plant is changed, this formula shall be subject to change by mutual agreement of the contracting officer and the Company.

(c) Except as otherwise agreed to in writing by the contracting officer and the Company, the United States shall require that its employees or that its customers, as the case may be, read meters hourly at Federal powerplants and at delivery points to customers of the United States where an attendant is continuously on duty, recording such readings on appropriate log sheets, and shall read all other meters, the readings to be as nearly as practicable on the last day of the monthly billing period; shall submit a copy of all readings to the Company for its records; and shall make such information available to the Company at other times upon request. Either party shall have the right to inspect the meter reading charts or records of the other party.

(d) For billing purposes, the meters shall be read at the end of each monthly billing period, and account shall be taken of the losses between the metering points and the points of delivery as provided in (a) and (b) of this article.

(e) The meters shall be sealed and the seals shall be broken only upon occasions when the meters are to be inspected, tested, or adjusted, and representatives of the Company shall be afforded reasonable opportunity to be present upon such occasions. The meters shall be tested by the United States once each year or at any reasonable time upon request therefor by either party thereto. Any metering equipment found to be defective or inaccurate shall be repaired and readjusted or replaced. Should any meter fail to register, the electric power and energy delivered

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hereunder during such period of failure to register shall be estimated jointly from the best information available.

(f) If any of the meter tests provided for herein discloses that the error of any meter or meters exceeds two per cent (2%), correction based upon the inaccuracy found shall be made of the records of electric service furnished since the beginning of the monthly billing period immediately preceding the billing period during which the test was made. Any correction in billing resulting from such correction in meter records shall be made in the next monthly bill rendered by the United States to the Company, and such correction, when made, shall constitute full adjustment of any claim between the parties hereto arising out of such inaccuracy of meters.

Cooperation in System Operation

15. It is understood that the details of operation of the Federal powerplants in conjunction with the Company's system cannot be covered by this contract, but the United States and the Company desire and intend that such operation shall be carried forward in and with a spirit of sympathetic cooperation in order that efficient results may be obtained for the benefit of all concerned. In this spirit, the United States, during its powerplant operating periods, will report hourly, through its powerplant operators or other designated employees, to designated representatives of the power department of the Company, giving such information as is available and is required in the operation and dispatching of the Company's system, and will provide said department information on log sheet forms to be furnished by the Company, showing power supplied by the Federal

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powerplants and information as to voltage, amperage, reactive kva, water records, switching data, and such other information as is normally required for smooth system operation and the coordination of the Federal powerplants with the Company's system, and will furnish to the Company such hourly, daily or monthly meter readings of its various loads as they are available, such readings to be mailed at weekly or monthly intervals to the Superintendent of Power, Idaho Power Company, 1220 Idaho Street, Boise, Idaho. In a like spirit the Company will furnish the United States, upon request, such technical and operating information as may be required in the design and operation of power facilities involved in the carrying out of this contract.

Communication Equipment

16. Each party shall install and operate on its respective facilities such equipment as may be required to afford a carrier current telephone channel which will provide direct communication between the office of the Company's district operator and the operators at Anderson Ranch powerplant, and between the Company's American Falls powerplant and the Minidoka plant at a later date and upon arrangements to be agreed on by the contracting officer and the Company. Communications between the Company's district operator and the operators at other Federal powerplants will be over presently existing facilities.

Control and Maintenance of Electric Transmission System

17. Each party shall operate and maintain its respective electric transmission system in good and satisfactory operating condition. The United States will provide and maintain and, through its contracting officer, will require of its customers who are to be served through the

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Company's system the installation, maintenance and operation of all proper service protective equipment as current electrical engineering practices recognize as necessary and efficient for the purpose of clearing and protecting the Company's electric transmission system of the faults, grounds and other types of electrical failures or disturbances that originate on the facilities of the United States or its customers.

Rights of Access

18. Each party shall afford to the duly authorized representative of the other the right, during the usual hours of business, to enter its premises for the purpose of reading or checking meters, or inspecting or testing any or all of the facilities of the other located on its property, or for the purpose of performing any other work incident to the performance of this contract.

Rights to Install and Remove Facilities

19. Each party hereby grants to the other the necessary licenses and permits to install, operate, maintain, replace or repair, either or all, on the property of the other such facilities as are agreed from time to time to be necessary or desirable for the purposes of this contract. Any facilities so installed shall be and remain the property of the party installing them, notwithstanding that they may have been affixed to the property of the other party; and the owning party shall have a reasonable time after the termination of this contract to remove such facilities. If either party desires a license or permit extending beyond the term of this contract with respect to certain facilities, the installation, operation, maintenance, replacement, repair and removal of such facilities on or

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from the property of the other party will be covered by a separate license or permit.

Construction Standards

20. The parties hereto shall construct, maintain and operate their respective interconnected power receiving and delivery facilities in accordance with accepted standards at least equal to those provided by the National Electric Safety Code of the United States Bureau of Standards.

Equipment to be Sold by the Company to the United States

21. The United States will purchase and the Company will sell and convey to the United States such parts of the Company's installed metering equipment presently utilized by the Company in serving the United States or any of its customers, which the United States determines is necessary for metering power and energy delivered by the United States to itself or any such customer. The contracting officer and the Company will agree upon a price to be paid for the equipment involved and payment thereof by the United States will be made as soon after transfer of the equipment and receipt of an itemized bill therefor as the necessary vouchers can be prepared.

Uncontrollable Forces

22. Neither party shall be considered to be in default in respect to any obligation hereunder, if prevented from fulfilling such obligation by reason of uncontrollable forces. For the purpose of this agreement, the term "uncontrollable forces" shall mean any cause beyond the control of the party affected, including, but not limited to, inadequacy of water for the generation of the electric power and energy herein contracted for,

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failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, strike or labor disturbance, sabotage and restraint by court or public authority, which by exercise of due diligence and foresight such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

Liability

23. Neither party, its officers, agents and employees, or any of them, shall be liable for any claims, demands, costs, losses, cause of action, damages, or liability of whatsoever kind or nature, arising out of or resulting from the construction, operation, and maintenance of the facilities of the other party under this contract; provided, that each party shall be solely responsible for the claims of and payments to its employees and agents for injuries occurring in connection with their employment.

Rules and Regulations

24. The United States and the Company may mutually agree upon and put into effect, from time to time, such operating rules and regulations as may be required in order to establish the methods of operation to be followed in the performance of this contract.

Transfer of Interest in Contract

25. No voluntary transfer of this contract or of the rights of the Company hereunder shall be made without the written approval of the Secretary of the Interior, and any successor or assignee of the rights of the

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Company, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of this contract to the same extent as though such successor or assignee were the original contractor hereunder; provided, that the execution of a mortgage or trust deed, or indentures supplemental thereto, or judicial or foreclosure sale made thereunder, shall not be deemed voluntary transfer within the meaning of this article.

Waivers

26. Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this contract shall not be deemed to be a waiver with respect to any subsequent default or matter. Any delay, short of the pertinent statutory period of limitation, in asserting or enforcing any right, shall not be deemed a waiver of such right.

Notices

27. Any notice, demand, or request required or authorized by this contract shall be deemed properly given if mailed, postage prepaid, to the Regional Director, United States Bureau of Reclamation, Boise, Idaho, on behalf of the United States, except where otherwise herein specifically provided, and to the President and General Manager, Idaho Power Company, 1220 Idaho Street, Boise, Idaho, on behalf of the Company. The designation of the person to be notified or the address of such person may be changed at any time by similar notice.

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Contingent Upon Appropriations

28. The expenditure of any money or the performance of any work by the United States hereunder which may require appropriations of money by the Congress or the allotment of Federal funds shall be contingent upon such appropriations or allotments being made. The failure of the Congress to appropriate funds shall not relieve the Company from any obligations theretofore accrued under this contract, nor give the Company the right to terminate this contract as to any of its executory features. No liability shall accrue against the United States in case such funds are not so appropriated or allotted.

Officials Not to Benefit

29. 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 that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Covenant Against Contingent Fees

30. The Company warrants that it has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the United States the right to annul the contract or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Company for the purpose of securing business.

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Term of Contract;
Termination of Existing Contracts

31. (a) This contract shall become effective on the date of initial service as defined in this article, and shall remain in effect until October 31, 1963, subject to the right of either party to terminate it on October 31, 1956, or at the end of any month thereafter by giving to the other party not less than three (3) years' advance written notice of the date of such termination. The date of initial service hereunder is hereby defined as the date following the execution of this agreement on which the United States is ready to furnish electric energy at the delivery point described in (a) of article 8 hereunder.

(b) The following contracts between the parties hereto shall terminate at the date of initial service under this contract:

April 23, 1929, Symbol and No. Ilr-543; April 10, 1930, Symbol and No. Ilr-594; October 1, 1934, as amended November 9, 1940, April 18, 1941, and August 18, 1941, all Symbol and No. Ilr-801; August 13, 1942, as amended August 15, 1944, both Symbol and No. I2r-14411; February 7, 1950, Symbol and No. I74r-1249; and July 28, 1950, Symbol and No. I74r-1412.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA

By /S/ H. T. Nelson
Regional Director, Region 1
Bureau of Reclamation

(SEAL)

Attest:
/S/ A. C. Inman
Secretary

IDAHO POWER COMPANY

By /S/ T. C. Roach.
President

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C E R T I F I C A T E

I, A. C. Inman, certify that I am the Secretary of the Idaho Power Company, the corporation named as Company herein; that J. E. Roach who signed the above contract in behalf of said Company, was then its Pres. & Gen'l Mgr.; that said contract was duly signed for and in behalf of said Company by authority of its governing body and is within the scope of its corporate powers.

/s/ A. C. Inman (Seal)

(SEAL)

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Exhibit A

Boise and Minidoka Projects
Illustration Based on
Estimated Distribution of Energy—1956

1000 Kilowatt-Hours

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	Total
Primary Deliveries to Company													
For transfer to U. S. loads	7,978	9,102	8,176	5,475	10,068	9,003	12,177	12,278	8,967	8,099	9,041	9,527	109,891
Losses on Company system	816	928	837	479	804	704	967	976	719	743	922	969	9,864
Subtotal - Input for transfer	8,794	10,030	9,013	5,954	10,872	9,707	13,144	13,254	9,686	8,842	9,963	10,496	119,755
Purchase by Company:													
2000 kw, 5-hr. peaking[2]	110	280	110	100	310	300	310	310	300	310	300	310	3,450
Subtotal - Minimum primary to Company	9,104	10,310	9,323	6,254	11,182	10,007	13,454	13,564	9,986	9,152	10,263	10,806	123,405
1200 kw, 5-hr. peaking subject to withdrawal[3]	233	210	232	225	233	225	232	233	225	232	225	232.5	2,737.5
Unsold U.S. transfer energy[4]	0	0	0	0	0	0	0	0	0	0	0	0	0
Total - Primary Input to Company	9,337	10,520	9,555	6,479	11,415	10,232	13,686	13,797	10,211	9,384	10,488	11,038.5	126,142.5
Secondary Power to Company													
Covered by lump sum payment[2]	6,084	3,917	-	-	-	-	2,654[7]	3,009[7]	660[7]	5,052[7]	3,333	3,748.5	28,457.5
Additional energy available[4]	-	-	5,936	11,462	5,640	6,512	-	-	-	-	-	-	29,550
Total - Secondary Energy	6,084	3,917	5,936	11,462	5,640	6,512	2,654	3,009	660	5,052	3,333	3,748.5	58,007.5
Total Available for Delivery to Company System	15,421	14,437	15,491	17,941	17,055	16,744	16,340	16,806	10,871	14,436	13,821	14,787	184,150
Direct Deliveries[6]													
U. S. sales by direct delivery	2,705	1,569	1,836	8,018	13,690	12,936	14,338	14,338	13,056	4,887	1,740	2,583	92,686
Losses on U. S. system[5]	494	494	463	541	914	740	872	876	773	527	499	560	7,654
Total - Input for direct delivery	3,199	2,063	2,299	8,559	14,495	13,676	15,210	15,214	13,829	5,414	2,239	3,143	99,340
Total Required from Federal Powerplants (Full scale year generation)	18,620	16,500	17,790	26,500	31,550	30,420	31,550	32,020	24,700	19,850	16,060	17,930	283,490
1/Losses estimated on basis of the following loads served from U.S. transmission facilities disregarding source of power:	10,669	10,468	9,817	11,484	17,292	15,717	18,689	18,592	16,392	11,175	10,579	11,889	162,363

2/Covered by $10,750 monthly payments. See Articles 7(a)(1) and 13(a)(1).
3/See Articles 7(a)(2) and 13(a)(2).
4/See Articles 7(a)(1) and 13(a)(3).
5/See Articles 7(b)(2) and 13(a)(4).
6/Direct deliveries are those in which power from a Federal powerplant is transmitted over Federal transmission facilities without intervening transfer over Company facilities. For example, Minidoka loads exceed the Minidoka powerplant capability and hence are served by direct delivery supplemented with transferred power.
7/Includes energy subject to withdrawal by the United States under provisions of Articles 11(d) and 13(a)(1).
Estimated distribution in 1,000 kilowatt-hours:—July 930; Aug. 930; Sept. 660; Oct. 190.

Region I
Branch of Power Utilization
November 29, 1950

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Exhibit B

Operating Plan for Boise River Reservoirs
For Irrigation, Flood Control and Power
(Interim Plan—Without Mountain Home Project)

The Bureau of Reclamation is completing construction on and will operate Anderson Ranch Reservoir and the Corps of Engineers plans to construct and operate Lucky Peak Reservoir. A coordinated plan of operation for these reservoirs together with existing Arrowrock Reservoir (herein referred to collectively as the reservoir system), and for the New York Canal diversion to Lake Lowell (Deer Flat Reservoir) and the Boise Project, is necessary to achieve the optimum multiple-purpose use of the combined total storage of 1,084,000 acre-feet. To attain this objective will require the close collaboration of the agencies operating the reservoir system. A plan of operation is set forth herein and the success thereof is contingent on its acceptance and approval by the Secretary of the Interior and the Secretary of the Army and, so far as it affects Anderson Ranch, Arrowrock, and Deer Flat Reservoirs, on its being agreed to by all entities having rights to storage in these reservoirs. To attain the maximum benefits from the reservoir system, the total capacity of 1,084,000 acre-feet will be utilized as follows: 101,000 acre-feet (75,000 acre-feet in Anderson Ranch Reservoir and 26,000 acre-feet in Lucky Peak Reservoir) will be reserved for dead storage and allocated exclusively to the production of power, maintenance of permanent pools for the preservation and propagation of fish and wildlife, and silt control; the remainder of the combined storage capacity in the amount of 983,000 acre-feet (418,000 acre-feet in Anderson Ranch,

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285,000 acre-feet in Arrowrock, and 280,000 acre-feet in Lucky Peak Reservoirs) will be operated in the joint interests of irrigation and flood control governed by the best available forecasts of runoff.

Periodically during the period from January 1 to July 31 of each year on the basis of precipitation, temperature, snow survey and runoff data, the Bureau of Reclamation and the Corps of Engineers will determine the volume of runoff that may be expected in the drainage area tributary to the Boise River above Diversion Dam (approximately six miles southeast of Boise, Idaho). To the extent that such services can be arranged for by cooperative agreements, the forecasts will be made after consultation with the Reclamation Engineer of Idaho, or his authorized representative; and the Project Manager, Boise Project Board of Control, or his authorized representative. To facilitate the forecasting of runoff, arrangements will be made among the interested agencies and water users to expand the existing hydrologic network and to establish and operate continuously a system for the efficient assembling and analyzing of the basic data. Until such time as a better method of forecasting be devised, the forecasts of runoff will be based upon average snow-water content at index snow survey courses as determined from periodic snow surveys on or about January 1, February 1, March 1, April 1, and May 1, together with a relationship between weighted accumulated precipitation, mean temperature, and runoff.

To the end of accomplishing the optimum multiple-purpose use of the reservoir system, beginning with the first year it is put into operation,

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the system will be operated, through close collaboration with all agencies concerned, on the basis of the forecasted runoff as nearly as practicable in accordance with the following plan:

1. For the purpose of rules and regulations to be prescribed by the Secretary of the Army under section 7 of the Flood Control Act of 1944 (58 Stat. 887, 890), the storage space allocated to flood control is defined as follows:

   It is the combined reservoir space, which, using the governing forecast of flood runoff for the year, is required to control the forecasted flood volume, from the time in that year that the total natural inflow to the reservoir system exceeds the allowable release through the succeeding July 31, by releases from the reservoir system during that period such that the flow in the river channel below Diversion Dam will not exceed 6,500 second-feet, so far as this control can be accomplished with a total system capacity of 983,000 acre-feet together with the diversion to the New York Canal of an average of 1,365 second-feet during March and of 2,820 second-feet from April 1 through July. The governing forecast of flood volume

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for each year is the forecast made as of the day the total natural inflow to the three reservoirs first exceeds the allowable releases.

The parameters shown on Plate I, 1/ empirically derived from floods of record, are enveloping curves of the storage requirements for various volumes of total forecasted runoff from any given date to July 31. The total reservoir capacity required to control a flood to a discharge of 6,500 second-feet (or less) past Diversion Dam is indicated by the ordinate of the parameter corresponding to the forecasted runoff on the date of the governing forecast.

2. During the period of each year from the date of the first forecast, about January 1, to the date of making the governing forecast for that year (approximately the middle of April) herein designated as the evacuation period, the reservoir system will be operated in such a manner that the reservoir levels as determined by the parameters on Plate I at the time total inflow to the reservoirs exceeds allowable releases can be attained with the minimum practicable rates and fluctuations of discharge. The rate of discharge during the evacuation period would be determined as follows:

1/ See footnote on page 8 of this exhibit B.

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the combined total reservoir capacity required on or about April 15 (the date on which total inflows normally may be expected to exceed allowable releases) would be estimated by use of the parameters on Plate I and an April 15 forecast which would be derived by deducting probable minimum inflows for the intervening period from the date of periodic forecasts beginning on January 1. The reservoir capacities required thus estimated would comprise tentative allocations of flood control space at which to aim the evacuation procedure. The rate of discharge at Lucky Peak Reservoir then would be selected as that required to release the probable maximum inflow for the period between the date of forecast and April 15 plus the evacuation necessary to attain the required total reservoir capacity indicated by the latest tentative allocation.

3. The evacuation of the active capacity in the reservoirs will be made in the following order: first, from Lucky Peak, second, from Arrowrock, and last, from Anderson Ranch. Filling of these reservoirs shall follow this schedule in reverse order to the extent that water is available at each of the respective sites.

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4. From the date of the governing forecast each year through July 31 of that year, herein designated as the filling period, the reservoirs will be operated in such a manner that the combined reservoir content shown on the parameter chart (Plate I) will be maintained but not exceeded, except when total storage above those capacities is required to limit the releases to allowable flows (as determined by downstream channel capacity and irrigation diversions) at Diversion Dam. However, when the forecasted runoff indicates extraordinary flood flows requiring storage capacity for flood control in excess of the total active storage capacity of the reservoir system (983,000 acre-feet) temporary releases at Lucky Peak in excess of the allowable flows may be required, but such releases will be made at a rate so as to minimize the peak rate of flow in the river channel below the Diversion Dam. The rate of such releases shall be specified by the Corps of Engineers after consultation with the Bureau of Reclamation.

5. All releases from the reservoir system, as herein provided, are subject to the condition that no releases will be made at rates or in a manner that would be inconsistent with whatever operating rules

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and regulations are laid down by the Chief Engineer, Bureau of Reclamation, or the Chief of Engineers, Department of the Army, for the purpose of protecting from damage the dams and reservoirs being operated under his supervision.

6. In order to enhance the recreational value of Lucky Peak Reservoir after recession of the flood each year that reservoir will be filled by transfer of water from Arrowrock storage, if not already full from flood water storage, and will be held full through September 7 each year except when Arrowrock Reservoir irrigation storage is exhausted prior to that date.

If operating experience indicates the desirability therefor or if justified by future improvements in downstream channel of the Boise River, the Secretary of the Interior and the Secretary of the Army may, after consultation with the Reclamation Engineer of Idaho or his authorized representative and the Project Manager, Boise Project Board of Control or his authorized representative, modify from time to time the operating plan herein described with respect to allowable releases and the amount of space allocated to flood control each year on the basis of advanced forecasts of runoff. However, no modification which would result in a substantial change in the control of floods herein stated to be the objective of the original operating plan shall be made without the concurrence of all entities having rights in the reservoir system.

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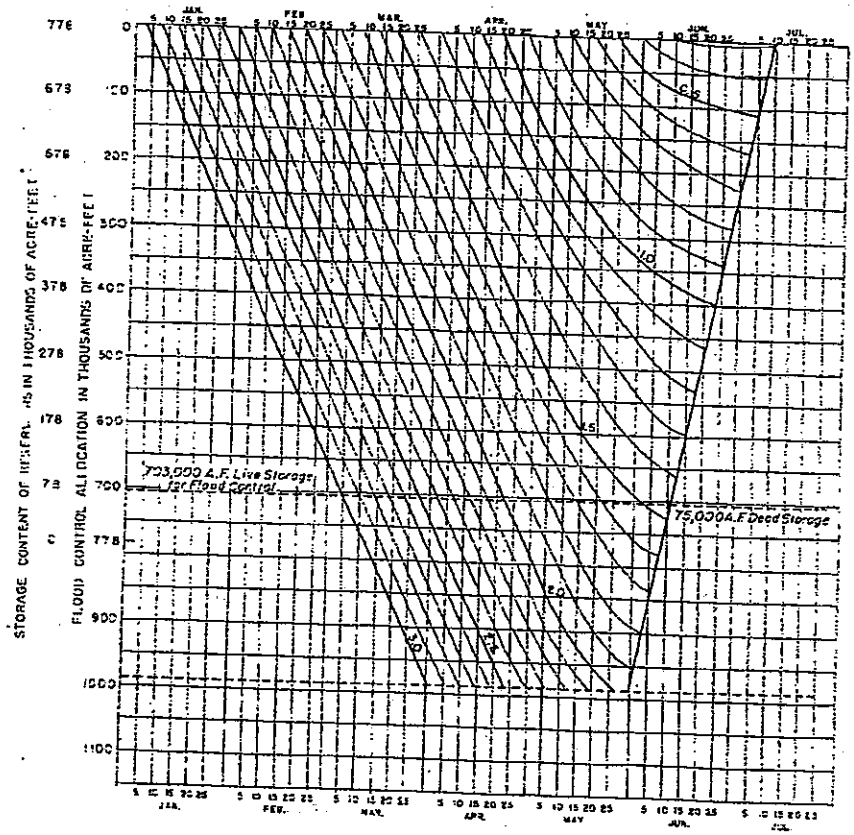
Revisions of the rules and regulations prescribed under the Flood Control Act of 1944 will be made by the Secretary of the Army if, in his judgment, those are requisite because of such modifications in flood control space allocations.

1/ Plate I shows the limiting flood control allocation in Anderson Ranch and Arrowrock as 703,000 acre-feet. With completion of Lucky Peak, this limitation would be raised to include also the live storage capacity of Lucky Peak Reservoir.

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PLATE I



NOTES:

RESERVOIR CAPACITIES
ALLOCATED FOR FLOOD CONTROL
UNITS - 1,000 A.F.

	LIVE	DEAD	TOTAL
ANDERSON RANCH	418	75*	493
ARROWROCK	285	0	285
TOTAL	703	75	778

* Of this amount 5,000 A.F. are reserved as live storage for power.

Parameters are anticipated natural flood runoff of Boise River at Diversion Dam in millions of acre-feet for the remainder of the period from any given date to July 31.

Storage reservation is based upon a release which would allow a maximum regulated flow at Lucky Peak Reservoir of 6,500 c.f.s. in January and February, 7,965 c.f.s. in March, and 9,320 c.f.s. in April to July.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BOISE PROJECT - IDAHO

ALLOCATION OF FLOOD CONTROL SPACE

OPERATING ANDERSON RANCH AND ARROWROCK RESERVOIRS DURING CONSTRUCTION OF LUCKY PEAK DAM AND RESERVOIR

BOISE, IDAHO

OCTOBER 15, 1950

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Exhibit C

Operating Criteria for the Utilization of Storage in Anderson Ranch and Cascade Reservoirs for Power Production

The Bureau of Reclamation is completing construction of: Anderson Ranch and Cascade reservoirs, two initial units of the Anderson Ranch powerplant, and modification of the Black Canyon dam and powerplant with a view to utilizing the storage for power production to the maximum degree consistent with its primary purpose of providing irrigation water. The following operating criteria have been developed for this purpose and especially to set adequately conservative limitations on such use of this storage as to obviate waste of water that might otherwise be storable for irrigation use.

Anderson Ranch Storage

In order to meet the estimated requirements of irrigation and other beneficial consumptive uses in the Boise Valley, having regard for existing natural flow rights and seeking efficient use of Anderson Ranch Reservoir by its coordination with Arrowrock and Lake Lowell reservoirs, water may be released from Anderson Ranch Reservoir for power production only within the following limitations:

1. Power production at the Anderson Ranch plant may be maintained at full rated capacity (27,000 kw) to the extent that head and water are sufficient for this purpose subsequent to the time the reservoirs attain their maximum content in the spring of a given year until September 30 of that year unless releases for this purpose would result in a reduction of Anderson

Ranch storage concurrently with spill of water from Arrowrock in excess of irrigation requirements.

2. Except as hereinafter provided, the release of water for power production will not be made from Anderson Ranch Reservoir when to do so would result in storage in Arrowrock Reservoir in excess of the following limiting values: 1/

Date	Storage in Arrowrock (Acre-Feet)
October 1	207,000
November 1	203,000
December 1	170,000
January 1	199,000
February 1	224,000
March 1	250,000
April 1	264,000

or would result in a lesser amount in storage in Anderson Ranch Reservoir than is indicated as the minimum under the curves shown on plate 2.

3. Release of water for power production that will result in storage above the limiting values given in 2 above and release of water for power production between April 1 of a given year and the date Anderson Ranch and Arrowrock reservoirs attain their maximum content in that year will be permitted only when the least favorable forecast for

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1/ These values represent the maximum allowable content of Arrowrock Reservoir for the dates shown which, after fulfillment of downstream requirements, would have permitted complete regulation of inflow below Anderson Ranch Reservoir and above Diversion Dam in any year of past record.

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a given date for a given storage season of storable inflow at Anderson Ranch indicates that water will be spilled therefrom concurrently with spill from Arrowrock Reservoir, and only to the extent of the indicated spill. Until more satisfactory forecasting for this purpose is developed, the attached curves on plate 1 showing minimum storable flow at Anderson Ranch Reservoir in relation to forecast runoff for Boise River at Diversion Dam from date of forecast through July 31 will be used together with the best available forecasts of runoff for the latter point.

Cascade Reservoir Storage

Storage of water in Cascade Reservoir and release of water therefrom for the production of power at Black Canyon powerplant will be guided by the following criteria and subjected to the following limitations:

Negotiations are now in progress among the United States, the Black Canyon Irrigation District and other irrigation interests of the Payette River Basin to determine, by contract, the respective allocations of active storage space in Cascade and Deadwood reservoirs as among those interests and prospective irrigation developments outside the Payette River

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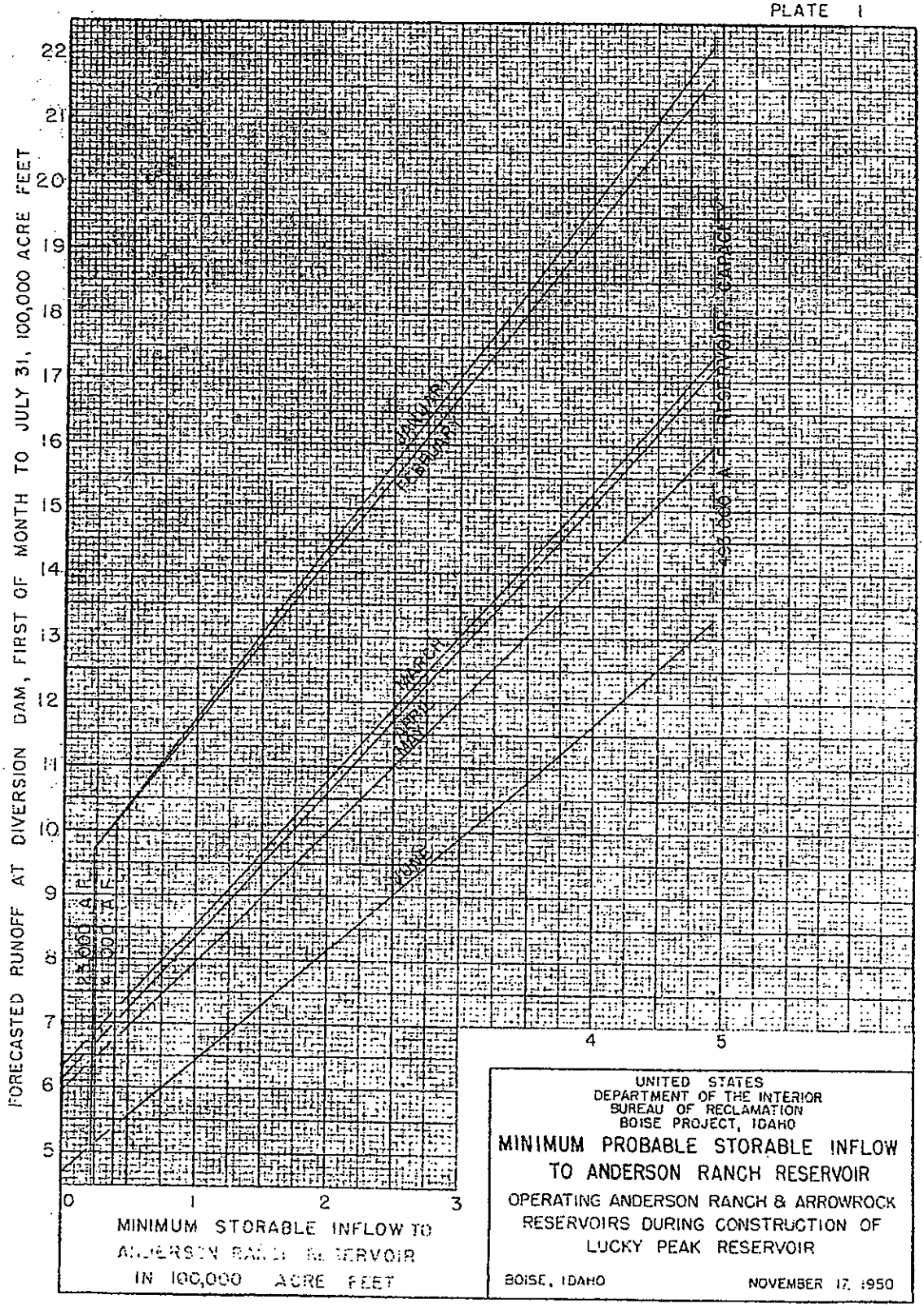
B1_IPC0014238

Basin. Until allocations of space are concluded by contract, it is expected that the top 425,000 acre-feet of active capacity in Cascade Reservoir will be available for storage of water for power production, subject, however, to the rights of the United States to release such water for the production of power at any powerplant situated above the Black Canyon powerplant.

AFF000801
B1_IPC0003221

B1_IPC0014239

PLATE 1

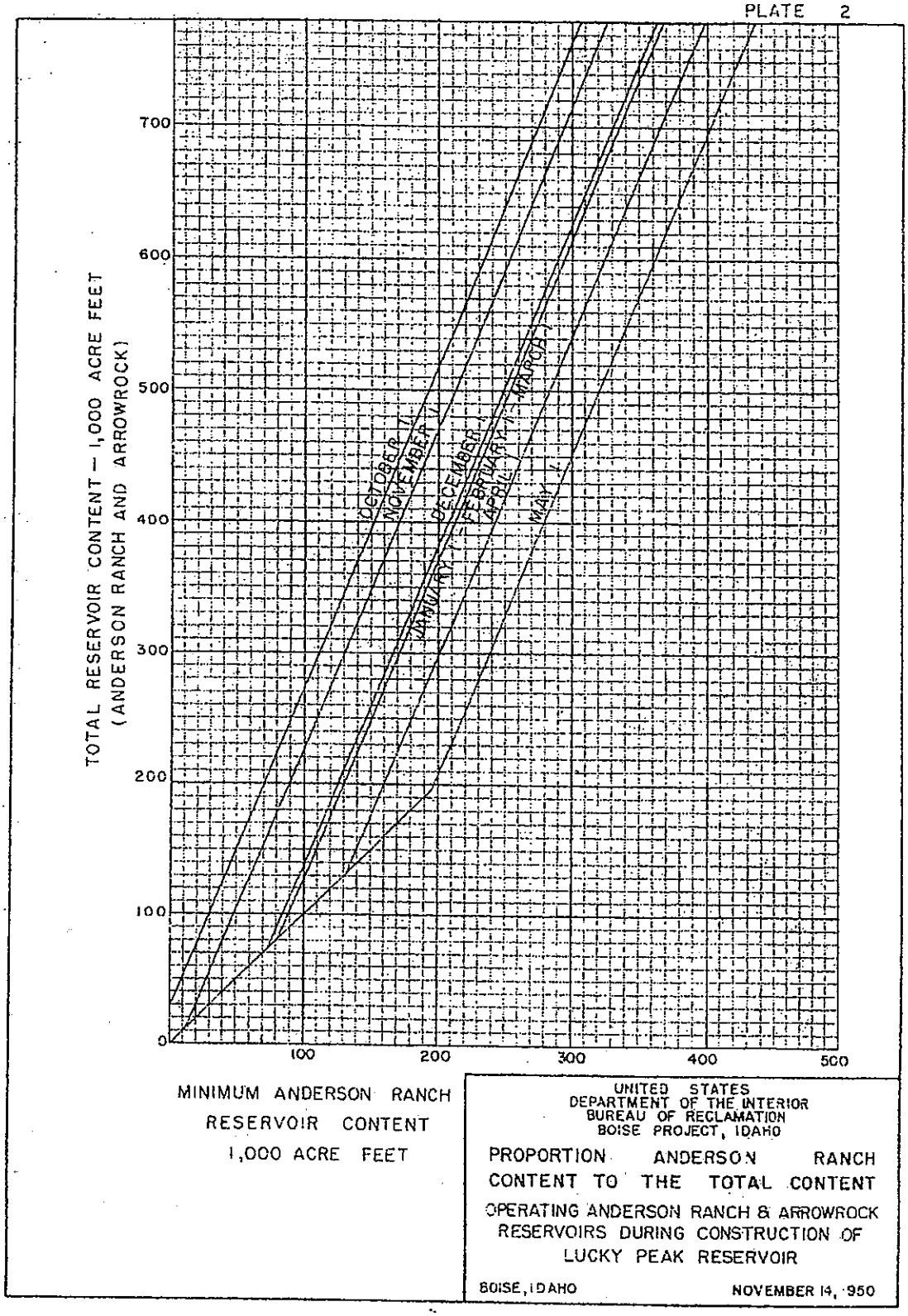


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PLATE 2



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
BOISE PROJECT, IDAHO

PROPORTION ANDERSON RANCH CONTENT TO THE TOTAL CONTENT OPERATING ANDERSON RANCH & ARROWROCK RESERVOIRS DURING CONSTRUCTION OF LUCKY PEAK RESERVOIR

BOISE, IDAHO NOVEMBER 14, 1950

AFF000803

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B1_IPC0014241

Exhibit D

Existing Loads of United States and its Customers Requiring Service Over the Company's System, with Data as to Maximum Demand and Energy Requirements now Anticipated

Load	May 1 to Sept. 30		Nov. 1 to Mar. 31		April & October	
	Max. KW	MWH	Max. KW	MWH	Max. KW	MWH
Owyhee Project:						
Gem Pumping Plant	5,500	16,008	80	285	3,300	1,707
Dead Ox Pumping Plant	2,200	7,016	12	28	1,320	756
Ontario-Nyssa and Owyhee Ditch Pumping Plants, Owyhee Dam and Delos Foster	2,638	4,637	147	490	1,650	609
Advancement Pumping Plant	65	181	---	---	39	19
Malheur Siphon	8	2	8	2	---	---
Kingman Colony Pumping Plant	30	115	---	---	30	23
Boise Project:						
Arrowrock Dam	---	---	83	116	70	20
Boise Diversion Dam	---	---	56	65	40	11
C-Line Relift Pumps	140	384	---	---	84	40
Minidoka Project:						
American Falls Dam	50	36	50	49	50	15
Minidoka Power System, including 10 wells on North Side Pumping Division	7,900	18,134	12,700	42,789	8,600	9,754
Miscellaneous Loads:						
Milner Low Lift Pumping Plant	2,000	5,980	---	---	1,200	620
Totals	20,531	52,493	13,136	43,824	16,383	13,574
Rounded Totals ...	20,500		13,100		16,400	

Loads at pumping plants are primarily irrigation pumping loads, with incidental uses in connection with the operation and maintenance of those plants.

Loads at dams are for construction and operation and maintenance activities at those dams and uses incidental thereto.

The Minidoka power system load comprises both irrigation pumping and a general commercial load.

The Boise and Owyhee project loads herein described are west of a north-south line through Glenns Ferry, Idaho, and the Minidoka Project and Milner Low Lift loads are east of it.

AFF000804

B1_IPC0003224

B1_IPC0014242

Exhibit V

250

Cummings 2/13
Campbell 2/13
Stewart 2/14
Clinton 2/16

FEB 16 1933

To: Chief Engineer, Denver, Colorado and Superintendent, Burley, Idaho

From: Regional Director

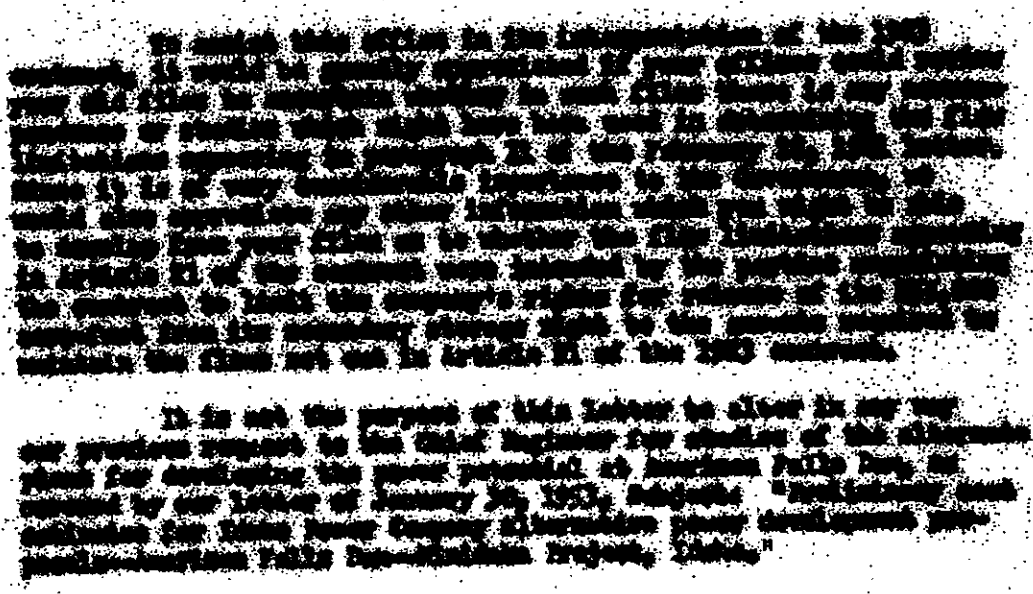
Subject: Power rights of Idaho Power Company and the United States under contract No. Ilr-733, dated June 15, 1923—Minidoka Project

In connection with certain studies being made with respect to the proposed American Falls Power Plant, the Idaho Power Company has taken the position that under the 1923 contract it has the right to demand for power generation at American Falls the release of the 255,000 acre-feet of water accruing to its secondary storage right under Articles 18 and 19 of the contract at any time within the periods prescribed in the contract and that the limitations imposed under Article 21 of the contract on the flows at the head of Shoshone Falls do not affect this right.

Some difficulty has been encountered in interpreting the provisions of Article 21 of the contract, due to the fact that the article provides in part "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 * * *". (emphasis supplied) The company contends that the above-quoted limitation does not limit its right to demand release of water for generation of power at American Falls, and contends that the limitation merely applies to the release of water for use below Milner Dam.

We have reviewed the files leading up to the negotiation of the contract, and find that apparently the first mention in correspondence of the flow limitations at Shoshone Falls appears in a letter to the Idaho Power Company, c/o Electric Bond and Share Company, 71 Broadway, New York, from Director A. P. Davis of the Reclamation Service, dated February 28, 1921. The last two paragraphs of Article 21 of the 1923 contract appear to be the result of suggestions made by the Idaho Power Company (see in this connection letter from Director A. P. Davis to the Chief Engineer, dated April 19, 1921, subject: "Conference with D. F. Pullen of the Idaho Power Company").

AF018706



(Signed) H. T. Nelson

[redacted]

[redacted]

[redacted]

AF018707

Exhibit W

Am. Falls Reservoir

112, 211

Released to File DEC 2 '53

Rec'd by

November 10, 1953

Mr. Glen Simmons
U.S. Bureau of Reclamation
Burley, Idaho

Dear Sir:

Please release, starting Monday morning, November 16, 1953, from Idaho Power Company's secondary storage space in American Falls Reservoir an average of 2,000 c.f.s. of water for our use at our American Falls plant. It is our desire that this flow be released on the following schedule: Monday through Saturday 6,000 c.f.s., 11:00 A.M. to 8:00 P.M., and 185 c.f.s. during the remaining hours in the week.

Please continue this flow until further notice.

This request is not intended to change the water past Milner to less than that required to maintain the scheduled flow at Twin Falls, as provided in the contract.

Very truly yours,

H. R. Moore
Supt. of Power

HRM:MM
CC - Mr. D. S. Campbell
U.S.B.R. Boise

AFF007952

Exhibit X

Idaho Falls, Idaho
November 20, 1953

120 Free 11/23
150 " 11/24
600
400

Mr. N. V. Sharp, Chairman
Committee of Nine
Filer, Idaho

Dear Mr. Sharp:

I attended a meeting in Boise yesterday of Bureau of Reclamation officials and representatives of the Idaho Power Company to discuss a request by the Power Company for release of 2,000 second-feet of its secondary storage from American Falls Reservoir.

You will recall that in the original contract when the Government acquired the Power Company rights at American Falls that Company was awarded 45,000 acre-feet of primary storage in the reservoir plus 255,000 acre-feet of a secondary right at American Falls to be drawn between October 1st and the following spring. The use of the secondary right would be canceled after the reservoir filled in any storing season and its use at any time at American Falls was restricted to an amount that would not produce in excess of certain specified total flows at Shoshone Falls.

Prior to the meeting yesterday I had been of the opinion from memory, without consulting the record, that the Idaho Power Company had never drawn this secondary right at a rate in excess of the amount required to produce the limiting flows at Shoshone Falls. Mr. Pemsel of the Power Company, however, produced some letters from L. B. Darlington, Superintendent of the Minidoka Project, written in 1933, which showed that the government had filled a request from the Power Company for delivery of certain specified releases from American Falls reservoir during the 1932-33 winter that did produce flows at Shoshone Falls in excess of the specified maximum amounts.

I do not know at this time whether Mr. Darlington acted in this matter on his own responsibility or whether he was advised to do so by Mr. Stoutemeyer. In any event I do not think that the Snake River watermasters would be bound by the action of a Government official but instead it is my opinion that the actual terms of the contract should control.

The only explanation for Mr. Darlington's action that occurs to me is that he simply overlooked the provision in another paragraph in the contract that specified the limiting flows at Shoshone Falls.

AF012464

The Bureau of Reclamation on advice of Mr. Stinson has refused to grant the Power Company's request for the additional releases, holding that they are controlled by the contractual provision not to exceed the specified maximum flows at Shoshone Falls.

It appears to me that the Bureau of Reclamation has been unduly generous to the Power Company in its interpretation of the Company's secondary rights, in that it releases at all times from October 1st to the next spring as much of water to produce at Shoshone Falls the maximum flows set forth in the contract without imposing the 255,000 acre-foot limitation at American Falls outlet.

Whenever the Power Company requests on October 1, or some subsequent date the release of enough water past Milner to produce the maximum specified flows at Shoshone Falls it in effect is asking for the release of enough water from American Falls to produce such flows. At such time, it seems to me, the full discharge from American Falls should be charged against the Power Company's secondary right and with the accumulated total after October 1st amounting to 255,000 acre-feet at American Falls the Power Company would be entitled to no further releases even for maintaining flows below Milner.

The secondary right is measured at American Falls and that portion of it not required to produce the desired flows at Shoshone Falls can be diverted at Milner and Minidoka dams or stored in Lake Walcott.

The Power Company officials stated at yesterday's meeting that regardless of what they felt were their contract rights their policy would be to cooperate with the watermasters in insuring a full supply of water in the reservoir for irrigation use.

The watermasters have a greater interest in winter releases from American Falls now than they have had in the past because under the Palisades contracts they have agreed to pay the cost of any power losses at Minidoka dam due to regulations in flow at that point below 2,750 second-feet. If they follow the policy of first filling American Falls reservoir before spilling water down the river they will create large fluctuations in flow at Minidoka dam which may easily cost them twice as much as the previously estimated cost of $23,000 a year for supplemental power at the Minidoka power plant.

Accordingly, if the matter is to be handled in an efficient, economical manner it will be necessary from time to time during the winter to make estimates of probable supply for American Falls and how much can

AF012465

safely be spilled prior to April 1st of the following spring, depending on streamflows, reservoir contents and precipitation on the watershed. The water that can safely be spared should then be spilled during the period when the flow at Minidoka would otherwise be below 2,750 second-feet in order to reduce the power damage payments they are required to make.

I prepared and presented to the meeting such an estimate of conditions to be expected and what appeared to me to be a safe release of additional water at this time, as follows:

"Acre-feet available for storage at American Falls Nov. 30 to March 31, after allowing for canal diversions at Milner and secondary rights of Idaho Power Company at Milner and excluding May spill from Jackson Lake

Year	Available acre-feet	Flow at Minidoka (Gross) second-feet		
		Dec. 1	Jan. 1	Feb. 1
1938	1,340,000	3,400	2,700	2,000
1952	1,390,000	5,800	4,900	4,000
1951	1,110,000	5,000	4,300	3,600
1950	1,250,000	4,600	3,900	3,200
1949	1,160,000	4,200	3,600	2,900
1948	1,260,000	3,400	2,700	2,100
1947	1,180,000	4,500	3,800	2,500
1946	1,260,000	4,200	3,900	2,900
1945	1,050,000	3,600	2,800	2,300
1944	1,080,000	4,700	3,900	2,500

Flow at Minidoka Nov. 1, 1953 = 3,400 second-feet
Nov. 14, 1953 = 3,500 second-feet

By November 30, American Falls under present regulation schedule should contain 950,000 acre-feet, leaving 750,000 acre-feet to fill to capacity. Assuming 1,050,000 acre-feet available after that date for storage would mean a spill of 300,000 acre-feet to spill by April 1.

From November 30 to March 31 is 121 days so this would be an average spill of 2,500 acre-feet or 1,130 second-feet per day for balance of time to March 31.

This would appear to justify increasing the present outflow at American Falls by say 1,000 second-feet and run at that rate

until mid-December. The situation could then be re-evaluated in the light of stream flow conditions and reservoir precipitation prevailing at that time and if it appeared advisable the flow could be again reduced. The extra 1,000 second-feet would amount to 50,000 acre-feet from November 20 to December 15.

The parties present at the meeting representing the Power Company and the Bureau of Reclamation accepted the suggestion for the release of an additional 1,000 second-feet at this time to run until December 15, when we will again review the situation. It was distinctly understood that this action was taken to increase the flow at the Minidoka dam and not in recognition of any claims by the Power Company for release of its secondary storage right.

Under the terms of the Palisades contracts the storage releases from American Falls and other reservoirs are supposed to have the approval of the Committee of Nine acting as an advisory committee. It is, however, manifestly impossible to call a meeting of this committee every time a change in stream flow is made. I am therefore advising you in detail of the situation and if you have any objection to the plan as above outlined you can communicate same to the Bureau of Reclamation.

Very truly yours,

Leon Crandall
Watermaster

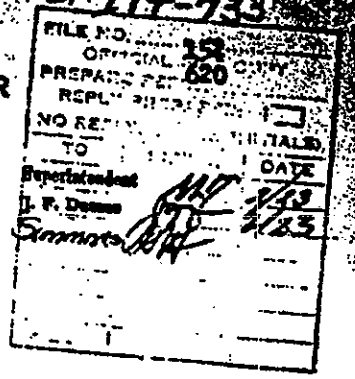
cc: C. H. Paulsrud, Jerome
R. P. North Twin Falls
U. S. B. R., Boise
U. S. G. S., Boise
Idaho Power Co., Boise

AF012467

Exhibit Y

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
REGIONAL OFFICE, REGION 1
BOX 937, BOISE, IDAHO





December 4, 1953

Memorandum

To: Files

From: Assistant Regional Counsel Van Uden
Mr. Merrill J. Marts, Chief, Resources & Contracts Branch

Subject: Conference regarding Idaho Power Company request for release of secondary storage from American Falls Reservoir under June 15, 1923 contract, Symbol and No. IIr-733, between the Company and the United States

Under letter dated November 10, 1953, to Mr. Simmons at Burley, the Idaho Power Company requested release of an average of 2,000 c.f.s. of water, starting in November 16, 1953, from its secondary storage under the June 15, 1923 contract for use at the Company's American Falls plant. This release would have caused the flows at Shoshone Falls to exceed the c.f.s. total flow limitations set out in Article 21 of the 1923 contract. 1/ The conference requested by the Company was held on November 19 at the Boise Regional Office.

The following persons were present:

Idaho Power Company	Bureau of Reclamation
A. C. Inman	H. T. Nelson
B. C. Russell	F. M. Clinton
H. R. Moore	H. R. Stinson
	R. T. Van Uden
Watermaster, District 36	M. J. Marts
	Dick Lindgren
Lynn Crandall	Glenn Simmons (Burley)

1/ While the discussion at the November 19 meeting referred to flows measured at Shoshone Falls and to the flow limitation provided for in Article 21 of the 1923 contract, it should be kept in mind that the Company has a plant at Twin Falls and that in accordance with Article 22 of the 1923 contract flows are measured at Twin Falls instead of Shoshone Falls according to Article 22, the amount of flow [illegible] 100 [illegible] Falls and to include it [illegible]

AF018148

Mr. Crandall advised that the criteria for operating American Falls Reservoir during the filling period beginning October 1 of each year had always been to limit releases to such amounts as were needed to maintain the total flows at Shoshone Falls specified in the 1923 contract and that it had never been considered that the Company has the right to demand releases which would cause these flows to be exceeded. He further advised that, under the Shoshone Falls flow requirements and the canal diversion requirements, there never had been a storage refill period in which less than 255,000 acre-feet had been released from American Falls, and the Company had had the benefit of these flows for operation of its American Falls plant, even though part of the releases had been made to meet canal diversion requirements.

Subsequent to the conference, Mr. Lindgren ascertained from Bureau estimates that operating under the basis described by Mr. Crandall had resulted in annual releases from the Company's secondary storage during the critical 1930-38 period averaging about 150,000 acre-feet per year and ranging from 100,000 acre-feet to about 185,000 acre-feet. These releases plus releases for canal diversion requirements would amount to over 255,000 acre-feet each storage period and the Bureau figures, therefore, definitely confirm Mr. Crandall's statements.

Mr. Stinson stated that the Bureau had consistently interpreted Article 21 of the 1923 contract as limiting the Company's right to demand release of secondary storage to the amounts necessary to make the total flow at Shoshone Falls correspond to the flows provided for in Article 21 of the contract. He called attention to the further provision of Article 21 which authorizes the use by the Company of not to exceed, 3,000 acre-feet of storage in Lake Walcott in regulating the American Falls releases to maintain the required flows at Shoshone Falls. Utilization of the 3,000 acre-feet storage capacity in Lake Walcott affords the Company an opportunity to regulate releases from American Falls Reservoir so as to generate power on daily peaks at the Company's American Falls plant. Mr. Stinson summarized the Bureau's position as being willing to release, at the Company's request, from American Falls Reservoir so much of the Company's secondary storage capacity as may be necessary to make the total flows at Shoshone Falls comply with the flow limitations set out in Article 21 of the 1923 contract, taking into consideration the Company's right to utilize 3,000 acre-feet of storage capacity in Lake Walcott for regulatory purposes.

Mr. Russell made reference to some early operations in the late 1920's or the early 1930's which he felt supported the Company view that it could demand the release for use at American Falls of its secondary storage in such amounts as it desired without regard to the flows at Shoshone Falls. Some letters from Mr. E. B. Darlington, then Superintendent of the Minidoka Project, to the Power Company on the subject of releases were shown by Mr. Russell to Mr. Crandall.

AF018149

Copies of these letters were not left with this office and we are therefore not aware of their date or content. It was pointed out that there had been a special lease of storage contract dated April 23, 1929, between the United States and the Company under which the Company purchased unused storage in the American Falls Reservoir. This contract remained in full operation until 1931. In 1931 under the terms of a contract between the Company, the Government and the American Falls Reservoir District, a substantial part of the leased storage was taken from the Company and leased to the District. The 1929 contract as amended by the 1931 contract continued in force, however, and the Company continued to use and pay for a substantial amount of storage until the 1929 contract was terminated by the contract of October 1, 1934, between the Company and the Government. Mr. Crandall took the position that any releases of secondary storage resulting in flows at Shoshone Falls in excess of those provided for in Article 21 of the 1923 contract and not covered by the special 1929 agreement were not in accordance with the 1923 contract, and should not be considered as establishing a precedent.

Mr. Crandall made a proposal (copy attached) that the releases from American Falls Reservoir be increased by 1,000 c.f.s. until December 15, 1953, at which time the prospect of refilling the reservoir should be again reviewed. This, he felt, should be done to get the most out of the Minidoka power plant and thereby relieve the American Falls water users of part of the liability assumed by them under the Palisades repayment contracts to pay the Minidoka Project for power it could otherwise have generated within its 2,700 c.f.s. right.

Mr. Crandall pointed out that if releases from American Falls are limited to those required to satisfy the requirements of the 1923 contract in order to fill American Falls as soon as possible, large deficiencies in the flow required to satisfy the Minidoka 2,700 c.f.s. right will result. These deficiencies under the Palisades' contracts could cost the American Falls water users about twice the previously estimated $23,000 annual cost for replacement power. Mr. Crandall stated that careful operation of the reservoir, taking into consideration streamflows, reservoir contents, precipitation in the watershed, and other pertinent factors could reduce the American Falls water users' payment for replacement power to a minimum and at the same time guard against failure to fill the reservoir.

Mr. Moore advised that releases in the basis proposed by Mr. Crandall would be acceptable to the Company. Mr. Simmons, representing the Minidoka Project Office, had no objection to the proposal.

AF018150

Mr. Inman stated that the Company had never demanded release of water under the 1923 contract when such releases would jeopardize the interests of the irrigators and did not propose to do so in the future. He suggested that no attempt should be made to resolve the question of Company rights under the 1923 contract but that, instead, these problems be handled in the future by conferences as they come up. He requested that no reply be made to the referenced Company letter.

The Bureau representatives, in agreeing to Mr. Crandall's proposal for release of an additional 1,000 second-feet until December 15, 1953, emphasized that the action was taken to assist the American Falls water users and was not to be considered a recognition of the Company's claims as to rights to demand release of its secondary storage under the 1923 contract.

Attachment

Copy to: Regional Supervisor of Power
(w/c attachment)
Regional Project Development Engineer, Attn: 750
(w/c attachment)
Superintendent, Burley, Idaho
(w/c attachment)

AF018151

Exhibit Z

130

STATUS REPORT

WORKINGS OF PALISADES WATER SAVINGS AGREEMENT

p. 8 Summ

U. S. Bureau of Reclamation

Boise, Idaho
August 5, 1968

Reclamation's
Exhibit No. 7014

STATUS REPORT
WORKINGS OF PALISADES WATER SAVINGS AGREEMENTS

This is a status report on important gains in the efficiency of total water use in the entire Upper Snake River Basin through the workings of Palisades water savings and exchange agreements that were entered into by some 57 water user entities as a part of the Palisades Dam Project authorization package. . .

The report also brings out (1) the complex nature of surface-ground water relationships existing in the entire Upper Basin, and (2) the necessity for evaluating individual project hydrologic operations as part of an integrated whole. The characteristics of the Upper Snake River hydrologic regimen are unique in Idaho, as well as the Northwest, and without consideration of the above-listed factors, certain indicated diversions for the purpose of manipulating ground water levels may appear to be excessive when related to irrigation diversion in the traditional manner.

The Palisades Project was initially authorized in 1941 as the Palisades Dam Project by the presentation to the President and the Congress of a report and findings of feasibility by the Secretary of the Interior on December 9, 1941 (H. Doc. No. 457, 77th Congress, 1st Session), under the provisions of section 9 of the Reclamation Project Act of 1939 (53, Stat. 1187). That finding incorporated the report of the Commissioner of Reclamation to the Secretary of the Interior, dated November 1, 1941. The supporting engineering and economic report of the Bureau of Reclamation was the product of investigations begun by the Bureau in 1932 to study means of providing urgently needed supplemental storage in the Upper Snake River Valley.

The report of the Commissioner of Reclamation to the Secretary of the Interior, noted above, stated that the success of the Palisades Reservoir would depend on the conservation of 135,000 acre-feet of water annually then being lost to the reservoir system because of winter diversions for stock and domestic purposes. The Bureau of the Budget, speaking for the President, approved the project with the reservation that submission of estimates of appropriations needed for construction be withheld until local interests had given satisfactory assurance to the Secretary of the Interior that winter diversions in certain areas above American Falls Dam would be eliminated.

A thorough investigation of water uses and requirements in the Upper Snake River Valley was made by the Bureau of Reclamation during the 1940's subsequent to the time the project was first authorized. The primary purpose of this investigation was to provide factual information to serve as a basis for the negotiation of agreements with water users of the Valley covering the elimination of water loss caused principally by winter operation of canals. An associated objective was to gather factual material from which to determine a proper distribution of the 433,593 acre-feet of reserved space in American Falls Reservoir. When the American Falls Reservoir, 120 miles downstream from Palisades, on the main stem of the Snake, was completed in 1927, the contemplated use of that space was for new land developments. For a number of years shortly following completion of American Falls Dam, the reservoir failed to fill because of an unprecedented drought. The reserved space was, therefore, leased to existing water users.

A report covering the results of the above investigation, entitled "Water Supply for Palisades Reservoir Project, Idaho" (Project Planning Report No. 1-5.17-1), was issued by the Bureau of Reclamation in October 1946. The report presented the results of extensive water supply studies of the Upper Snake River Valley, together with a proposed winter water-saving program and a plan for development of new land. After the issuance of this report, the Bureau of Reclamation carried on lengthy negotiations with the water users in an effort to obtain the maximum possible conservation of water and also to obtain agreement as to an equitable distribution of the reserved space in American Falls Reservoir.

The practice of diverting water into the canals in winter for stock and domestic purposes, established many years ago, was deep rooted and difficult to alter. Various proposals were made by the United States, out of which a compromise evolved. The compromise involved these principal points: (1) the elimination by the water users at their own expense of winter diversions in order to conserve water for storage in Palisades and American Falls Reservoirs; (2) the curtailment of the use of water for power generation at Minidoka Dam for the financial account of the Minidoka Project to conserve additional water for storage in American Falls, Island Park, and Palisades Reservoirs; (3) the coordinated operation of the reservoir system for maximum storage water yields; (4) the establishment of uniform storage holdover privileges in all reservoirs; (5) a permanent exchange of contract storage rights between American Falls and Jackson Lake Reservoirs to reduce storage delivery losses; (6) the distribution of American Falls Reservoir space as follows: 315,000 acre-feet to existing lessees, 47,593 acre-feet to the North Side Pumping Division of the

Minidoka Project, and 71,000 acre-feet to the Michaud area; (7) the recognition of existing rights to the diversions made during periods of flood flow; (8) the commitment of Palisades users to allow that reservoir to be pooled with the next 300,000 acre-feet of storage added to the system; and (9) the clarification of storage and diversion rights in connection with American Falls Reservoir.

The winter water-saving program involves the elimination of the long-standing practice of supplying domestic and stock water to farmsteads by operating irrigation canal systems throughout the year. A substantial portion of the water diverted into the canals during the winter percolates to the underlying groundwater reservoir which is not tributary to the Snake River above Milner Dam. Hence, the elimination of winter seepage losses from the canals in such nontributary areas increases the amount of water available for storage. State of Idaho water rights to divert water in winter for stock and domestic purposes were clearly established by actual use over many years. Reliance on the canals for domestic and stock water was continued for many years because of the high cost of drilling deep wells and pumping water from them and because it is more convenient to water livestock from canals than from wells. Furthermore, there was no real incentive to save water until Palisades Reservoir was constructed on the Snake River because the water would otherwise spill past Milner Dam. Since the water users involved in the winter water-saving program incurred considerable expense in equipping their farmsteads with wells and lost the convenience of watering livestock from canals, it was understood among all prospective participants that those water users who make possible the saving would be entitled to a special right to store the saved water to the extent required to fill their share of the storage capacity in American Falls and Palisades Reservoirs.

By coordinating the operation of all reservoirs in the system, the maximum volume of storage water can be carried over in the reservoir system from wet cycles to dry cycles. The amount of that carryover is substantially greater than would be the case if Palisades were operated independently from the existing system. Through this coordination, Jackson Lake can be operated primarily as a holdover reservoir, and only limited irrigation water is drawn from it until Palisades Reservoir has been emptied. The additional, usable return flow made available from application of this holdover storage will augment further the supply of irrigation water during drought periods. Operation studies of the reservoir system, taking account of these factors, show that storage in Palisades Reservoir and the elimination of winter diversions and curtailment of power at Minidoka Dam would have made enough additional water available to eliminate all shortages on existing projects during the past 79 years, except those in the extremely

dry years of 1934 and 1935. Even in those years, however, an appreciable reduction would have been made in the shortages.

Resolutions giving assurance that the water users would agree to water saving provisions which would satisfy the conditions of the authorizing document for Palisades Dam were obtained in 1949 from the governing bodies of the interested water user groups. On the basis of these resolutions some preliminary construction contracts were executed late in fiscal year 1949. In the early 1950's, these resolutions were confirmed by formal contracts with the water users. Over 50 contracts, generally referred to as the "Palisades Contracts," were negotiated over a period of several years. In addition to the annual water saving of 135,000 acre-feet, established as a prerequisite to the beginning of construction of Palisades Dam, these contracts provide a basis for possible maximum annual savings of 276,000 acre-feet by curtailment of winter diversions by canals diverting at Milner Dam.

Under the contracts each of 41 irrigation districts and companies agreed to eliminate winter diversions for a period of 150 consecutive days during the November 1 through April 30 period each year. The estimated average annual saving from such curtailment is 143,000 acre-feet, of which 135,000 acre-feet is attributable to curtailment by canals above American Falls Dam and 8,000 acre-feet by those diverting below that point. Under the contracts, such curtailment was to begin with the 1958-1959 storage season. Partial curtailment of winter diversions actually began 4 or 5 years prior to this time and increased gradually throughout this period. The full annual saving of 143,000 acre-feet has been accomplished each storage season, beginning with the 1958-1959 storage season.

In addition to the mandatory annual savings of 143,000 acre-feet above, the contracts provide a basis for an additional savings by curtailment of winter diversions by the North and South Side Twin Falls canals diverting at Milner Dam. The possible maximum annual savings is estimated to be 276,000 acre-feet. Although this water saving is exercised only at the option of the two companies, winter diversions have been substantially reduced each winter, beginning with the winter of 1960-61. It appears that the companies' decision to exercise this option during the 1960-61 storage season was prompted by the low storage levels in the reservoir system at the end of the 1960 irrigation season. This decision was indeed timely in view of the fact that streamflow in 1961 was much below normal, the reservoir system failed of filling by a substantial amount, and a number of areas experienced irrigation water shortages. Without Palisades Reservoir and winter water saving actually accomplished, the shortages would have

been much more severe. Had the curtailment of winter diversions at Milner Dam been started in 1959 the water shortages in 1961 would probably have been eliminated.

Winter diversions at Milner Dam have been substantially reduced each winter since 1961. The amount of the reduction varies from year to year, ranging from a maximum of 260,000 acre-feet in the winter of 1961-62 to a minimum of 198,000 acre-feet in the winter of 1965-66. In addition to the obvious benefits from saving water for storage in the reservoirs the maintenance of the canal system is more effective and less costly when the canals are shut off in winter. For this reason, it is expected that such savings will be increased in future years and eventually the maximum annual savings of 276,000 acre-feet will probably be realized with the canals shut off from November 1 to April 1 in all years.

Under the Palisades contracts the water saved by curtailment of winter diversions is first credited to the company or district making the saving until the reservoir space owned by the particular district or company is filled. When this occurs the saved water accrues to the remaining unfilled space in the reservoir system. Thus, the water saving program provides benefits to the entire irrigated area which has interests in the reservoir system.

The Palisades contracts have a third water saving feature. These contracts provide for limiting the use of water for power generation at American Falls and Minidoka Dams below the amounts that would accrue to rights for power production at these two dams. Such curtailment in the exercise of power rights at Minidoka Dam will result in a loss of generation of units 1 to 6 of that powerplant but will result in saving of water for storage for irrigation use. The water so saved is credited to American Falls, Island Park, and Palisades Reservoirs. In compensation for such losses in power generation, replacement power is provided to the Minidoka Power system, and, based on a moving average of the net annual amount of replacement power and energy required, the costs thereof are charged to the beneficiaries of the resultant water saving and the financial benefit is credited to the water users of the Minidoka Project. This provision for sharing the cost by water users actually benefited provided an equitable solution to a long-standing controversy.

The extent of water savings from curtailment of power rights varies from year to year. The saving is fully effective only during prolonged cycles of low streamflow when the available streamflow is insufficient to fill the reservoirs and the water can be stored and used. In a number of years there is enough streamflow to fill the reservoirs without any water saving.

During a prolonged cycle of low runoff such as occurred 1930-35, it is estimated that the effective saving from curtailment of power rights would be 2,700,000 acre-feet or an average of 450,000 acre-feet annually.

The water saving from curtailment of power rights actually overlaps the water savings from curtailment of winter diversions at Milner Dam to the extent that power releases can be used to satisfy diversion requirements at Milner Dam. Out of the estimated average annual saving of 450,000 acre-feet from curtailment of power rights during low runoff cycles up to a maximum of 276,000 acre-feet may be creditable to curtailment of winter diversions at Milner Dam. Thus, the net annual increase in storable water from curtailment of power rights is 174,000 acre-feet.

The Palisades contracts provide for maximum annual water savings during prolonged cycles of low streamflow as follows:

	Acre-feet
Elimination of winter diversions above American Falls Dam and at Minidoka Dam	143,000
Curtailment of winter diversions at Milner Dam	276,000
Curtailment of power rights at Minidoka Dam	174,000
Total annual savings	593,000

Thus, the potential savings for a six-year drought period such as occurred 1930-35 would be in excess of 3.5 million acre-feet.

It was recognized in the negotiations that led to the water savings and exchange arrangements necessary for the construction of Palisades Reservoir that these arrangements would require adjustments in the court decrees that govern the distribution of water in the Upper Snake River Valley, Water District 36. All the water users agreed to the arrangements on the basis that this would be accomplished and that all the compromises agreed to in the negotiations would be included in the resulting court decree.

Records of irrigation diversions in the Henrys Fork Valley indicate annual diversion rates in excess of 10 acre-feet per acre in many areas. To those not understanding Upper Snake River surface water-ground water relationships, these high diversion rates may appear unreasonable and imply poor management and inefficient application of water. It should be recognized that present practices evolved from past failures in attempting

to irrigate the area by conventional means and that so far subirrigation is the only method fully demonstrated to be practical in this area. If reuse of return flow and the use of groundwater in the nearby Mud Lake area is considered the overall diversion rate compares favorably with those elsewhere on the Snake River.

The present heavy use of water in the Henrys Fork Valley results from subirrigation of about 70,000 acres of land in that area. An additional 40,000 acres is irrigated by conventional surface irrigation. The practice of subirrigation 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 over 60 years in manipulating the water table to give maximum crop production during the relatively short growing season in that area.

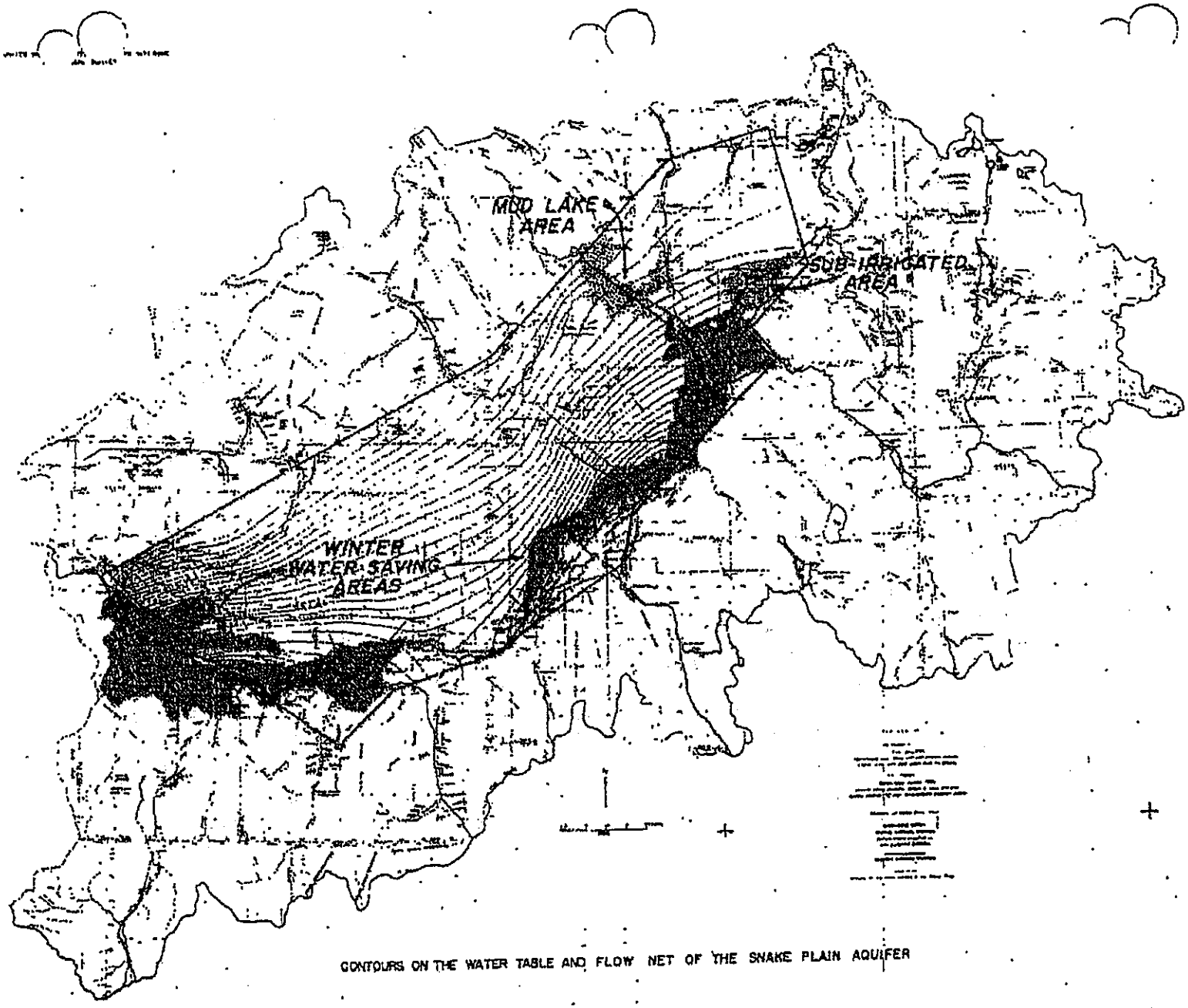
Hydrographic studies have shown that relatively large quantities of groundwater move westward toward Mud Lake as a result of maintaining high water tables in the Henrys Fork Valley. This is well illustrated by the attached chart, "Contours on the Water Table and Flow Net of the Snake Plain Aquifer." This groundwater movement has caused a phenomenal increase in the inflow to Mud Lake since 1900 and is the major source of supply for approximately 75,000 acres now irrigated in that area. If in addition to the approximately 110,000 acres actually irrigated in the Henrys Fork Valley credit is also given for the 75,000 acres irrigated in the Mud Lake area and for reuse of return flow in the Henrys Fork Valley, the overall diversion efficiency is comparable to that elsewhere on Snake River. For example, the total diversion from Fall River, Henrys Fork River, and Lower Teton River during 1967 was 1,017,000 acre-feet. The irrigation season return flow was 186,000 acre-feet. On this basis, the net diversion for 185,000 acres in the general area, including Mud Lake, was 4.35 acre-feet per acre. In view of these facts, any alteration in the present use of water in the Henrys Fork Valley would affect not only the established irrigation economy in that valley, but also that in the Mud Lake area.

Summary

From the very inception of Water District 36 (1916) and the Committee of Nine (1919) the area can be credited with many innovations of progressive water management which can best be summarized as a water banking operation. These include operation of storage reservoirs as a system rather than a collection of individual reservoirs. Although there is a strict paper accounting of water accruals to individual reservoirs by priority dates, advantage has been taken of the physical diversity of the system by holding carryover storage as far upstream as possible to the advantage of all. Much litigation was avoided and a smooth-running operation resulted from agreement on such factors as evaporation and conveyance losses and bank storage. The area pioneered water exchanges in Idaho, culminating in a future ground water-surface water exchange imbedded in the Lower Teton Project authorization. A continuation of this principle will be the salvation of the Salmon Falls, Oakley Fan, and other water-deficient areas in Upper Snake River Basin.

The elimination of winter water runs for stock and domestic use, the establishing of uniform storage water holdover privileges, the coordinated system-wide operation of reservoirs, the subordination of winter power production to conserve storage, and the exchange of storage space to effectuate its use closer to points of diversion, all have resulted in better distribution and utilization of the waters of Snake River. These water conservation practices will provide a water savings in excess of 600,000 acre-feet annually to augment dry-year supplies. This is a significant step in the direction of obtaining full use of the available water supplies in Snake River. In the future more needs to be done in water saving through added cooperation among all water users. These include additional reservoirs, canal lining programs, further water exchanges, including ground water, improved management of water distribution, and increased efficiency of on-farm application and use of water.

This is the situation as it exists today. However, as our technology of water use continues to expand and our available water supplies become more fully utilized, better and more efficient methods of irrigating the lands in the Snake River Valley can be developed. Certainly we should endeavor to make the most efficient use of all our natural resources and as new and better techniques are developed we should put them to their maximum use. The accomplishments so far have resulted from the cooperative effort of the entire area. Future developments for the conservation and use of Idaho's land and water resources will require similar mutual understandings and cooperation by all concerned parties.



CONTOURS ON THE WATER TABLE AND FLOW NET OF THE SNAKE PLAIN AQUIFER

Exhibit AA

CONFERENCE WITH U.S. BUREAU OF RECLAMATION
CONCERNING SECONDARY STORAGE SPACE IN AMERICAN FALLS RESERVOIR

The meeting was held at the U.S.B.R. offices at 1:00 P.M., November 19, 1953, and was the result of a letter written by Idaho Power Company to Glen Simmons, U.S.B.R. at Burley on November 10, requesting the release of 2,000 c.f.s. of water from Idaho Power Company's secondary storage space.

In attendance:
H. T. Nelson - U.S.B.R.
F. M. Clinton - "
H. R. Stinson - "
R. T. Van Uden - "
M. J. Martz - "
Glen Simmons - "
Lynn Crandall - Water District #36
A. C. Inman - Idaho Power Co.
B. C. Russell - " " "
H. R. Moore - " " "

Mr. Nelson asked who wished to start the discussion and suggested that someone read the letter requesting the water release. Mr. Stinson seemed to have the only copy so he read it and immediately gave his interpretation of the contract, citing paragraph 21 and then paragraph 19.

Mr. Crandall then stated that he did not believe the Company had the right to have this water released and related from memory past operations, particularly before the 1931-34 dry period, when it was his belief we had given up the right to use the space and the water stored in it.

We then referred to records that Mr. Russell had which showed we had used varying amounts of the water up to 1934.

There was considerable discussion as to whether or not water was released past Milner as a result of the release from American Falls in 1934 or whether paragraph 21, which might be interpreted as a limitation on the method and rate of release at American Falls, was actually a limit. Mr. Crandall was quite sure it had served as a limit but the water records were consulted and he was proven in error, whereupon he stated Mr. Darlington was in error. Mr. Russell recalled that Mr. Putnam, Mr. Darlington, and Mr. Stoutemeyer had decided, back about 1928, that the 1923 contract permitted Idaho Power Company to draw its secondary space storage water past American Falls in any quantity it saw fit, and Mr. Crandall stated that he would hate to be bound by all of the commitments made by Mr. Stoutemeyer.

Mr. Crandall then explained how water stored, to which the Minidoka Power Plant had a water right, must be paid for by the holders of space in Palisades, and that it had been his thought for some time, in view of the satisfactory carryover in American Falls and the rate at which it was filling, to release an additional 1,000 c.f.s. from American Falls and minimize the damages payable to the project.

It was asked by Mr. Nelson what should be done about Mr. Moore's written request for 2,000 c.f.s. release of water from Idaho Power Company's secondary storage space. After some discussion it was decided to destroy, or otherwise ignore, this request in view of the planned changes in normal flow to be passed by American Falls. These changes will increase the American Falls flow by about 1,000 c.f.s. immediately, with a further increase to about 2,700 c.f.s. by December 15.

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Mr. Stinson suggested that he answer Mr. Moore's letter with his interpretation of this point in the contract. Mr. Inman answered that if he did we probably would feel obligated to reply and might not agree.

It was apparent that Mr. Crandall was not particularly familiar with the contract because he was surprised to find that we pay operation and maintenance expenses for American Falls, based on 300,000 a.f. of water, as specified in the contract. It appeared that Mr. Stinson was not aware of this either.

Mr. Clinton, who made the Snake River studies for Palisades and who generally seems well informed on this river area, took little or no part in the discussion.

Mr. Nelson seemed anxious to adjourn the meeting and it was adjourned several minutes before the dead line of 2:00 P.M., when Messrs. Crandall and Simmons had to leave to catch the 2:30 P.M. plane.

H. R. Moore
Nov. 20, 1953

AFF008907

Exhibit BB

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-foot of water to be used for power purposes. The water was to be diverted and stored in the S½ Section 30, Township 7 South, Range 51 East, B.M., in Power County for use at the proposed reservoir [illegible] and 15201/01-2041 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 15201/01-2041 and R-273/01-2065. On September 29, 1933, the Department of Reclamation informed the permittee [illegible] 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 CC

SNAKE RIVER
HYDRO POWER

IDAHO POWER COMPANY

BOX 770 • BOISE, IDAHO 83701

November 9, 1967

NOV 10 [illegible]

Department [illegible]

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,

HRMoore

H R Moore
Vice President

JEB:mlm

cc: James E Bruce

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Exhibit DD

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

RECEIVED
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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 Salmon and Swan Falls.

II

That the Company had made or acquired various filings and/or rights on waters of the Snake River for storage and use

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 Millsites at Page 750.

(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

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

> 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 wherein he agreed to make available to them for irrigation use on lands irrigated by them, 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 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 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 tne 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 EE

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

AF012196

Exhibit FF

Calendar No. 212

93D CONGRESS, 1st Session | SENATE | REPORT No. 93-223

AUTHORIZING THE REPLACEMENT OF THE EXISTING AMERICAN FALLS DAM

JUNE 13, 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 13, 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 $18,431,000 (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 provide 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 4354.3 set forth in the amendment is the maximum water surface elevation which 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. 1629 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 $378,516.52 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 GG

510. Main

AMERICAN FALLS DAM REPLACEMENT
UPPER SNAKE RIVER BASIN
IDAHO

Executive Summary Report

December 1972

THIS REPORT WAS PREPARED PURSUANT TO PUBLIC LAW 89-561. PUBLICATION OF THE FINDINGS AND RECOMMENDATIONS HEREIN SHOULD NOT BE CONSTRUED AS REPRESENTING EITHER THE APPROVAL OR DISAPPROVAL OF THE SECRETARY OF THE INTERIOR. THE PURPOSE OF THIS REPORT IS TO PROVIDE INFORMATION AND ALTERNATIVES FOR FURTHER CONSIDERATION BY THE BUREAU OF RECLAMATION, THE SECRETARY OF THE INTERIOR, AND OTHER FEDERAL AGENCIES.

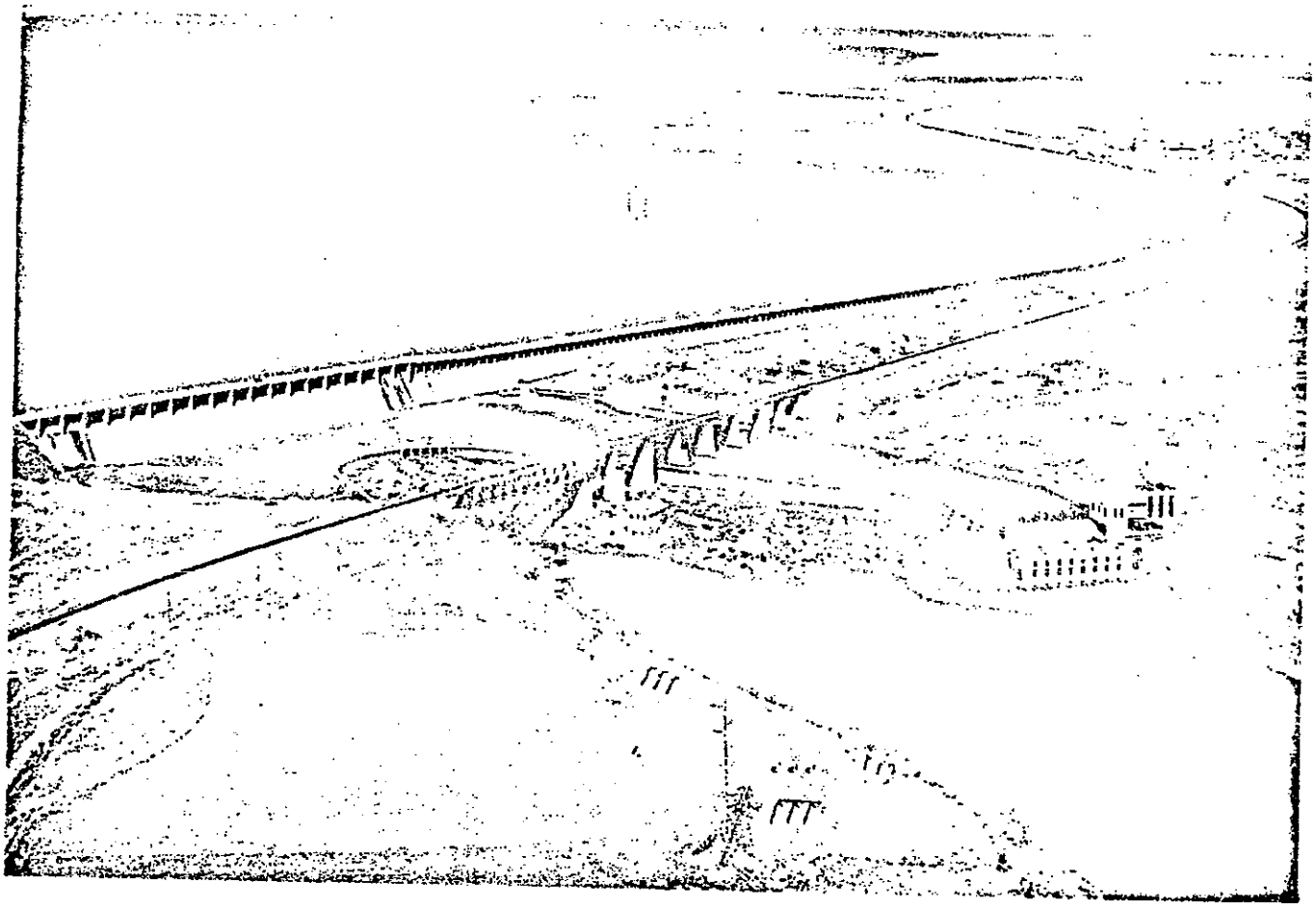
Department of the Interior
Bureau of Reclamation
Pacific Northwest Region

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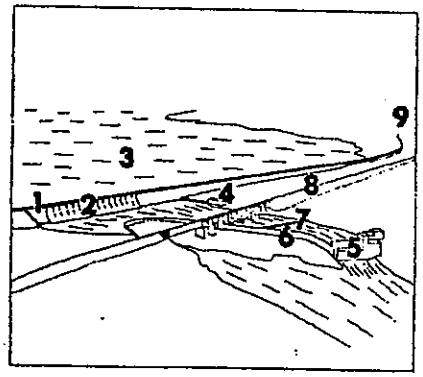
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Built over 40 years ago, American Falls Dam must now be replaced.



1 - American Falls Dam. 2 - Spillway. 3 - Reservoir. 4 - American Falls Pumping Plant. 5 - Idaho Power Company Powerplant. 6 - Forebay dam. 7 - Footbridge. 8 - Union Pacific Railroad. 9 - Town of American Falls.

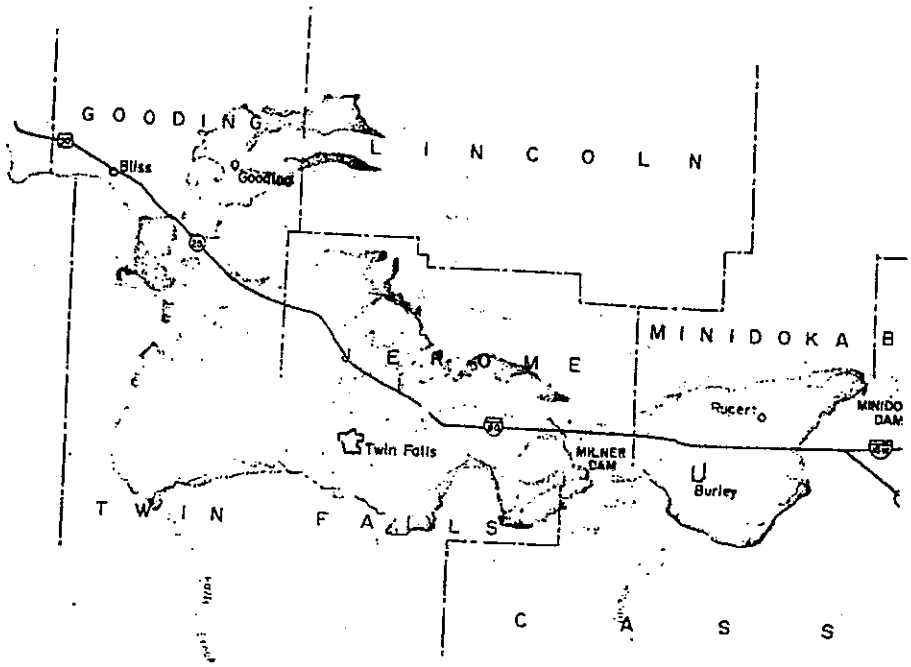
Cover: Artist's drawing of American Falls Dam Replacement just downstream from existing dam.

Upper Snake River Basin

0 10 20 30
MILES
One inch = approximately 16.2 miles



LANDS IRRIGATED BY MAIN STEM SNAKE RIVER



United States Department of the Interior
BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGIONAL OFFICE
FEDERAL BUILDING & U.S. COURTHOUSE
BOX 043-550 WEST FORT STREET
BOISE, IDAHO 83702

IN REPLY
REFER TO: 730
123.

To: Commissioner, Bureau of Reclamation

From: Regional Director, Boise, Idaho

Subject: American Falls Dam Replacement, Upper Snake River Basin, Idaho

This report presents a plan for replacing American Falls Dam and developing related multipurpose features. American Falls Dam is located on the Snake River in southeastern Idaho west of the town of Pocatello. Completed by the Bureau of Reclamation in 1927, the dam now needs to be replaced or extensively repaired.

The reservoir would be replaced to its original capacity of 1.7 million acre-feet. The storage provided by this reservoir is the foundation of the existing irrigation development in the upper Snake River basin. The largest storage reservoir in the upper Snake River basin, American Falls Reservoir contributes almost half of the usable storage on the main stem of the upper Snake River. Nearly 900,000 acres of land now receive irrigation water from the reservoir. American Falls Reservoir and the other upper Snake River basin reservoirs are operated as a system to provide water to lands throughout the basin, as well as for flood control, recreation, fish and wildlife enhancement, and power production.

NEED FOR REPLACEMENT

Abnormal cracking throughout the concrete dam was reported as early as 1929 and has become progressively more severe so that safety of the structure is compromised. The first storage restriction on American Falls Dam was in September 1964. An additional restriction was placed on the structure in September 1972. The Bureau of Reclamation October 20, 1972, report, "Condition of the American Falls Dam," reemphasizes the hazardous condition of the dam; and, the continually deteriorating structure, if not replaced, may require further storage restrictions in subsequent years.

The Bureau of Reclamation has concluded that American Falls Dam does not meet current safety standards and must therefore be replaced or

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extensively rehabilitated. In their letter of September 28, 1972, this conclusion was corroborated by a distinguished board of private consultants after a thorough study of the dam's condition.

Two conditions have made replacement or major rehabilitation mandatory:

1. Concrete in portions of the dam is in a relatively advanced state of deterioration. In the 45 years since the dam was built, the concrete has gradually deteriorated due to a chemical reaction between the aggregate (sand and gravel) and the alkalis in the cement used in the dam's concrete. The occurrence and effects of this alkali-aggregate reaction were unknown at the time the dam was built. Freezing and thawing and wetting and drying have further aggravated the concrete deterioration.

2. There is a lack of cohesion or bond at some of the construction liftlines. With this weakness at the joints, it is possible that the dam may become unable to resist shearing or sliding downstream under the thrust of the reservoir.

Winter reservoir filling was restricted for several years to avoid dangerous ice pressures on the thin upper part of the dam; this restriction caused losses of storage yield. Reservoir filling has now been further limited to no more than 66 percent of reservoir capacity at all times. This restriction will cause serious water shortages on many lands in dry years.

Because the concrete deterioration is continuing, further filling restrictions appear to be inevitable until little or no water can be stored in the reservoir. This situation would cause financial failure for hundreds of farm operators and severe economic hardship for others. These events would in turn cripple the upper Snake River basin's overall economy, which is heavily based on irrigation agriculture. In addition, important flood control, fish and wildlife, recreation, and other benefits would be lost.

In addition, the existing two-lane crossing on American Falls Dam for State Highway 39 (18-21 feet wide) is far below current standards for safety and is structurally inadequate to carry modern loads. Heavy traffic, including many trucks hauling farm produce, causes hazardous conditions; and several serious accidents have occurred in recent years. A Bureau of Reclamation inspection of the bridge crossing in September 1972 concluded that the downstream 3-foot portion of the bridge between the abutment and the spillway is unsafe for live loads, and recommended that all traffic be taken off that portion of the bridge immediately. Conclusions of the inspection also showed that the bridge could be used only under limited conditions for another 5 to 10 years. The Idaho Department of Highways and the Bureau of Reclamation have concluded it is necessary to restrict use of the highway crossing to alternate one-way traffic as an interim step toward reducing the dangerous conditions.

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For these reasons, the replacement of American Falls Dam and accompanying highway crossing should be given high priority.

THE PLAN.

Based on comparative cost estimates and on an analysis of water supply and other factors, it was concluded that replacement of the existing dam is preferable to the extensive rehabilitation that would be required. The cost for a replacement dam was estimated to be slightly higher than either of the rehabilitation schemes investigated in detail. This cost difference was judged to be minor, however, when weighed against the fact that the replacement dam would be a completely new structure, while the life expectancy of a rehabilitated dam would be limited to the remaining life of the existing portions of the dam.

In addition, since rehabilitation would require evacuation and controlled filling of the reservoir during construction, serious water shortages could result. Replacement would not involve the possibility of water shortages because the existing dam would remain in operation during the entire construction period.

The multipurpose plan would enhance several aspects of the area's environment and would have minimal adverse environmental impacts.

Nearly the entire cost of the existing dam has been repaid by the irrigation water users, even though it has long been clear that other interests were receiving major benefits from the reservoir. Under current water-resource planning criteria, the other functions such as flood control, fish and wildlife, and recreation can be identified and fully developed; and cost allocation, repayment, and other analyses can incorporate all the functions benefiting from American Falls Reservoir.

The plan is attractive from an economic and financial standpoint. Direct benefits would exceed costs by a ratio of 3.2 to 1, and total benefits would exceed costs by a ratio of 4.5 to 1. About two-thirds of the cost of constructing the project would be repaid to the U.S. Government.

The major feature of this plan is the construction of a concrete and earthfill replacement dam just downstream from the existing American Falls Dam. Other facilities include (1) flood forecasting facilities, (2) fish and wildlife enhancement and fishery mitigation features, (3) a two-lane highway crossing on the new dam or a four-lane crossing if the Idaho Department of Highways funds the increased cost, and (4) basic facilities for public health and safety near the new dam. Following construction of the replacement dam, the existing dam would be removed. Construction of the replacement dam could be completed within five years after the first money becomes available.

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The American Falls Dam Replacement project would serve the functions of irrigation, flood control, fish and wildlife enhancement, recreation, highway improvement, and future power production.

Irrigation

The replacement of American Falls Dam would guarantee uninterrupted irrigation water service to an 892,650-acre area which has for many years been the foundation of the economy of southeastern Idaho. These lands make up half of the entire acreage irrigated from surface water in the upper Snake River basin. The irrigation organizations and individuals which now own 1,655,000 acre-feet of space in American Falls Reservoir would continue this arrangement; no change in existing irrigation rights or entitlements would occur. The remaining 45,000 acre-feet of reservoir space is now used for private power production.

All construction costs allocated to irrigation would be repaid to the U. S. Government, except for investigation costs which would be non-reimbursable in accordance with recent legislation. Payment capacity studies show that water users could repay all reimbursable irrigation costs in a 40-year period as set forth in the Reclamation Act of 1939, after meeting annual operating costs allocated to irrigation.

Flood Control

Under the plan, the reservoir would create major flood control benefits in three categories:

1. Along the Snake River upstream from American Falls Reservoir to the existing Palisades Reservoir by permitting controlled releases from Palisades.

2. Along the Snake River from American Falls Dam downstream to the Idaho-Oregon border where the river enters the Hells Canyon reach.

3. Downstream on the lower Columbia River.

These benefits would be achieved by operating up to 600,000 acre-feet of reservoir space on a forecast basis to help control floods. The reservoir would be operated to insure the filling of this space for the irrigators who have contracted for its use. The plan includes flood forecasting facilities representing the American Falls Reservoir share of the proposed multi-agency Columbia River Hydromet (hydrologic-meteorological) System.

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Fish and Wildlife Enhancement

The plan would enhance both the fish and the wildlife resources of the area; all enhancement measures upon which the Idaho Fish and Game Department has agreed to share costs have been included in the plan. The Fish and Game Department would administer these enhancement features. The plan also includes the measures recommended by the U. S. Bureau of Sport Fisheries and Wildlife to preserve the important fishery just downstream from the existing dam; the replacement project would not damage wildlife.

Enhancement measures include new hatchery ponds, a trout incubation channel, goose nesting islands, fisherman access areas, control of water temperatures in downstream releases through coordinated operation of the outlet works and spillway gates, and a fishing bridge across the Snake River below the American Falls.

Recreation

Sufficient lands are available to insure future public access to the reservoir for recreation; included are several hundred acres of Federal land recently leased by non-Federal public agencies for long-term recreational use. Existing and planned recreational areas being developed at the reservoir under nonproject programs eliminate the need to fund recreational developments under the plan. To recognize the recreational value of the reservoir, net recreational benefits are credited to the plan.

Highway Improvement

The replacement of the American Falls Dam would permit construction of a new river crossing for State Highway 39 to replace the narrow and dangerous crossing on the existing dam. Studies have shown that a modern highway crossing on the new dam would be more economical than a crossing at any other location. The plan therefore includes a wide, two-lane highway crossing on the crest of the replacement dam. This crossing would be twice as wide as the existing highway; it would meet the current traffic standards of the Idaho Department of Highways. The difference in cost between a direct replacement of the existing highway crossing and the construction of the wider crossing to meet current traffic standards would be assigned to the highway improvement function and would be nonreimbursable.

The Idaho Department of Highways has stated that it intends to fund the difference in cost between the two-lane highway included in the plan and a wider, four-lane highway; the four-lane highway is desired because of projected future traffic loads. The four-lane highway crossing would

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be built on the new dam if the Department of Highways provides the required funds ($1,500,000) prior to construction.

Future Power Production

The replacement dam would include four capped power penstocks in order to avoid precluding the future construction of a powerplant just downstream from the dam. These penstocks are included in line with current planning guidelines. The need for the penstocks should be studied further.

Environmental Impacts

The plan would make only limited changes in the environment as it involves replacing an existing dam and maintaining an existing reservoir at its present size.

Environmental impacts associated with the American Falls Dam Replacement are summarized in the following paragraphs:

The existing American Falls Dam would be replaced by a new concrete and earthfill structure. Construction of the new dam would remove a potential threat to human safety and well being in downstream areas by replacing the unsafe existing structure.

Construction of the new dam would inundate 8 acres of new land and river channel downstream from the existing dam. The new dam would not inundate any stream channel which is not already inundated as a result of the existing forebay dam of the Idaho Power Company powerplant.

The upstream section of the forebay dam would be replaced and moved about 100 feet downstream from its existing location for fishery mitigation purposes, thus inundating a small additional part of the American Falls.

Construction of the new dam would require modification of the intake of the existing American Falls Pumping Plant which serves the Michaud Flats Project, but the pumping plant structure would not be affected. Neither the Union Pacific Railroad nor the Idaho Power Company powerplant would be affected by the new dam.

The damsite area would be disturbed. Materials excavated to prepare the foundation of the new dam would be used in the new structure. Borrow areas for construction materials would be disturbed during construction. The exact location of the 520,000 cubic yards of construction materials would be identified prior to construction. The areas under consideration are not in the downstream riverbed. Temporary impacts of construction would include water turbidity, noise, scarring, additional traffic, and dust.

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The existing dam would remain in operation during the construction period, and irrigation service would continue as limited by reservoir filling restrictions. Traffic would be maintained on the existing roadway over the dam although traffic is now being restricted to alternate one-way traffic to comply with safety requirements. Use of the existing crossing would eliminate the need for a temporary river crossing which would have adverse environmental impacts.

The remaining concrete sections of the old dam structure would be visible only if the reservoir is completely emptied or where they may be incorporated in the new embankment. The rubble and remains of the old dam would be spread over the reservoir floor. Both embankment sections of the old dam would remain--the west side for possible use as a fishing pier and the east side which would tie into the new dam as a part of the embankment.

American Falls Reservoir would continue in operation, and current operating restrictions would be removed. Water storage would continue uninterrupted for 892,650 acres of irrigated land and for other purposes to safeguard the investments of hundreds of individual farm operators and insure the continued stability of the established agriculture-based economy of the area.

Shoreline erosion would continue on some 85 miles of the 155-mile-long reservoir shore. The dam replacement project would not affect the rate of erosion. An estimated 1,500 acres of additional land is expected to erode in a 100-year period.

A warehouse-workshop building would be constructed near the new dam. The specific site for this building has not been determined. The old buildings near the dam would be rehabilitated or replaced as necessary.

The human environment at the dam would be improved at existing access points by providing basic facilities for public health and safety. This would reduce pollution, esthetic deterioration, and safety hazards which would result from unrestricted public use. Land use would be altered (1) on 3 acres of land downstream from the dam on the east bank of the Snake River which would be used to develop a parking area, water and sanitation facilities, and related features; and (2) on a smaller site near the west end of the dam which would be used as a parking area during and after construction of the new dam.

The valuable fishery in the forebay area immediately downstream from American Falls Dam would be preserved through inclusion of a number of mitigation measures recommended by the Bureau of Sport Fisheries and Wildlife.

The fishery resources of the area would be enhanced. Trout production would be increased in the reservoir, in McTucker Creek at the upper end

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of the reservoir, and at the Idaho Fish and Game Department's American Falls Hatchery. Trout habitat would be improved through control of water temperatures by making selective releases from the reservoir. Fisherman access and safety would be improved.

A total of 50 islands would be built in the upper end of American Falls Reservoir for goose nesting, resulting in goose production in an area where no geese now nest.

Flood control would continue to be provided on the Snake River. Through a change in reservoir operation, flooding on the lower Columbia River would be reduced during large floods, and the threat of loss of life and property would be reduced.

The definite safety hazards associated with the narrow and dangerous highway crossing across the existing dam would be largely eliminated by providing a wider highway on the new dam.

Construction activities could require a force of up to about 350 workers during the peak construction period lasting 3 to 4 years. Some of these workers would come from the local area; the rest would move to this area temporarily. This population increase would be accompanied with the needs for housing, education, and other services.

ECONOMIC AND FINANCIAL EVALUATION

The multipurpose plan for replacement of American Falls Dam is economically justified. The economic justification for replacement is based on a comparison of project benefits to associated Federal costs. Benefits would be realized from irrigation storage, flood control, fish and wildlife enhancement, and recreation.

Annual equivalent benefits for project functions would total $7,346,800; direct benefits would total $5,210,100.

The net Federal investment is $27,708,000. This amount includes interest during construction, but excludes investigation costs to date. Since benefits were not identified for highway improvement and hydroelectric power, all costs associated with these two functions have been excluded. The annual equivalent net Federal investment plus annual operation, maintenance, and replacement costs of $94,000 would total $1,625,000.

Benefit-Cost Ratio

The benefits and costs have been expressed as annual equivalent amounts over a 100-year period of analysis using a 5-1/2 percent interest rate.

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Total benefits would exceed associated costs by a ratio of 4.5 to 1; direct benefits would exceed costs by a ratio of 3.2 to 1.

Cost Allocation

Construction, interest, and annual operating costs were allocated between the functions using the separable costs-remaining benefits method, and were based on a 100-year period of analysis and a 5-1/2 percent interest rate. Specific costs for basic health and safety facilities, highway improvement to meet current standards, and penstocks for future power generation were assigned directly to these purposes.

The cost allocation for all project functions is summarized as follows:

Purpose	Construction Costs	Interest During Construction	Annual Operating Costs
Irrigation storage	$18,971,000	$1,477,000	$33,700
Flood control	4,348,000	338,000	21,000
Fish & wildlife enhancement	1,520,000	117,000	23,500
Recreation	1,226,000	96,000	3,200
Highway improvement	1,861,000	145,000	--
Future power production	1,454,000	113,000	--
Basic health and safety	88,000	7,000	12,600
Total costs	$29,468,000 1/	$2,293,000	$94,000

1/ Includes the cost of constructing a two-lane highway but does not include the $1,500,000 in added costs if funded by the Idaho Department of Highways to provide a four-lane highway across the dam.

REPAYMENT

The repayment of allocated costs for Federal projects varies by function in accordance with applicable laws and policies. The repayment requirements for each function are discussed in the following paragraphs.

Flood Control

All costs allocated to this function would be nonreimbursable in accordance with existing law and policy.

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Basic Health and Safety

The cost of basic public health and safety facilities would be non-reimbursable. These costs include construction, interest, and operation, maintenance, and replacement.

Recreation

All of the costs allocated to recreation would be nonreimbursable consistent with provisions of Public Law 89-72. There are no separable costs associated with the recreation allocation. The plan of development recognizes that the specific recreation facilities at the reservoir are being constructed and will be maintained by local entities at no expense to the project.

Fish and Wildlife Enhancement

Part of the separable costs allocated to fish and wildlife enhancement would be reimbursable under the provisions of the Federal Water Project Recreation Act (P.L. 89-72) since the enhancement features would be administered by a public non-Federal entity. Associated investigation costs allocated to this function would be nonreimbursable under provisions of P. L. 92-149. In addition, the public body must agree to assume all the separable annual costs of the development.

The Idaho Fish and Game Department has stated its willingness to share the costs of fish and wildlife enhancement. The balance of the allocated costs would be nonreimbursable and would be borne by the United States.

Highway Improvement

The cost of improving the existing highway crossing to current standards would be nonreimbursable under the provisions of the Flood Control Act of 1962 (P. L. 87-874). The Idaho Department of Highways has indicated its intention to further upgrade State Highway 39 over American Falls Dam from a two-lane crossing to a wider four-lane highway and to provide the funds for this added improvement. These funds must be made available before such construction is started.

Future Power Production

All costs associated with deferred power production facilities, less costs of investigations, would be fully reimbursable. Repayment of these costs would be deferred until power production facilities have been constructed.

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Irrigation

The analysis of water users payment capacity reveals a general level of payment capacity adequate to cover the reimbursable irrigation cost. Irrigation repayment contracts shall provide for repayment by the water users of all reimbursable irrigation costs within a period that is commensurate with their ability to repay provided that the repayment period shall not exceed 40 years.

POSSIBLE RESERVOIR ENLARGEMENT

The possibilities of enlarging American Falls Reservoir were also evaluated. A December 1966 information report outlining the results of studies on replacement and on possible reservoir enlargement was widely circulated. The comments on that report showed that while support for replacement is virtually unanimous, many interests oppose enlargement. Opposition has centered on the inundation and other adverse environmental effects which enlargement would cause, particularly in the Fort Hall Indian Reservation. For these reasons, this report proposes the replacement of American Falls Dam at its existing size.

POSSIBLE FEDERAL POWERPLANT

The current investigation included reconnaissance studies on the potential for constructing a Federal powerplant at the American Falls site. Under current economic criteria, a powerplant is unjustified. The future potential for a powerplant should be reevaluated further.

Reconnaissance studies also showed that a reregulating dam and a powerplant at the Eagle Rock site downstream from American Falls are unjustified at this time.

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CONCLUSIONS

It is concluded that:

(1) American Falls Dam must either be replaced or extensively rehabilitated to assure continued safe operation of the dam and to permit storage to the full capacity of the reservoir. Serious storage restrictions have already been placed on the reservoir due to conditions of the present structure. Further storage restrictions are in prospect as the deterioration continues.

(2) Replacement of the dam rather than rehabilitation is in the public interest. A new structure would have a longer useful life and would guarantee uninterrupted use of storage during construction, yet it would cost little more than rehabilitation of the existing dam. In addition, the purposes of fish and wildlife enhancement, recreation, flood control, and highway improvement would benefit substantially from the replacement plan.

(3) The replacement of the dam and development of related features has engineering feasibility and is economically justified by benefits in excess of cost.

(4) Replacement of the dam to store 1.7 million acre-feet of water, the same capacity as the existing reservoir, is evaluated in this plan. Enlargement beyond this capacity, although economically justified by measurable benefits in excess of costs, has been rejected because of adverse effects, particularly on the Fort Hall Indian Reservation, and because of objections from other interests.

(5) The replacement plan would assure uninterrupted storage of irrigation water for about 900,000 acres of irrigated lands.

(6) Based on an analysis of representative farms, the irrigators have sufficient payment capacity to repay to the U.S. Government all reimbursable construction costs allocated to irrigation in a 40-year period and to meet annual irrigation operating costs.

(7) Irrigators have met nearly all of their repayment obligation to date on the existing dam; only about $600,000 remains to be repaid as of September 30, 1972.

(8) The plan would provide significant protection from flooding on the Snake River and on the lower Columbia River through use of up to 600,000 acre-feet of space on a forecast basis for flood control.

(9) The plan complies with Executive Order 11296 of August 10, 1966, concerning construction of Federally financed structures in flood-hazard areas; all proposed facilities have been designed to withstand the maximum floods anticipated.

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(10) The plan would enhance the fish and wildlife resources of the area. The Idaho Fish and Game Department has stated its intent to share in the costs of construction and to operate and administer the fish and wildlife enhancement facilities. The plan also includes the measures recommended by the U.S. Bureau of Sport Fisheries and Wildlife to preserve the existing fishery.

(11) The plan would provide recreational benefits by insuring the continued operation of a reservoir with adequate water surface to meet anticipated recreational demands. Existing and planned recreational developments by non-Federal public agencies and other groups through non-project programs will be adequate to meet recreational needs at the reservoir.

(12) Basic facilities to provide for public health and safety would be needed in the vicinity of the new dam during and after construction.

(13) The two-lane highway on the crest of the replacement dam is the most economical Snake River crossing which would meet the current traffic standards of the Idaho Department of Highways. A four-lane highway could be provided for a reasonable additional cost.

(14) The addition of a powerplant at American Falls Dam does not appear to be justified under current economic criteria. However, additional studies will be necessary to determine whether provisions for future power development should be included.

RECOMMENDATIONS

If American Falls Dam is authorized to be replaced it is recommended that:

(1) A new dam be built that would maintain a reservoir of 1.7 million acre-feet--the same size as the existing facility.

(2) a. Repayment of costs of the existing dam continue until the obligation is repaid.

b. The costs of the replacement dam allocated to irrigation be repaid by the irrigators within a period that is commensurate with their ability to pay, provided that the repayment period not exceed 40 years.

(3) Flood control be included as a project function and up to 600,000 acre-feet of capacity in American Falls Reservoir be operated jointly for flood control on a forecast basis to reduce damages on the Snake River and on the lower Columbia River.

(4) Fish and wildlife enhancement and recreation be included as project functions, and be subject to the provisions of the Federal Water Project Recreation Act of 1965 (Public Law 89-72). A non-Federal public body would administer and operate the fish and wildlife facilities and share in the construction costs.

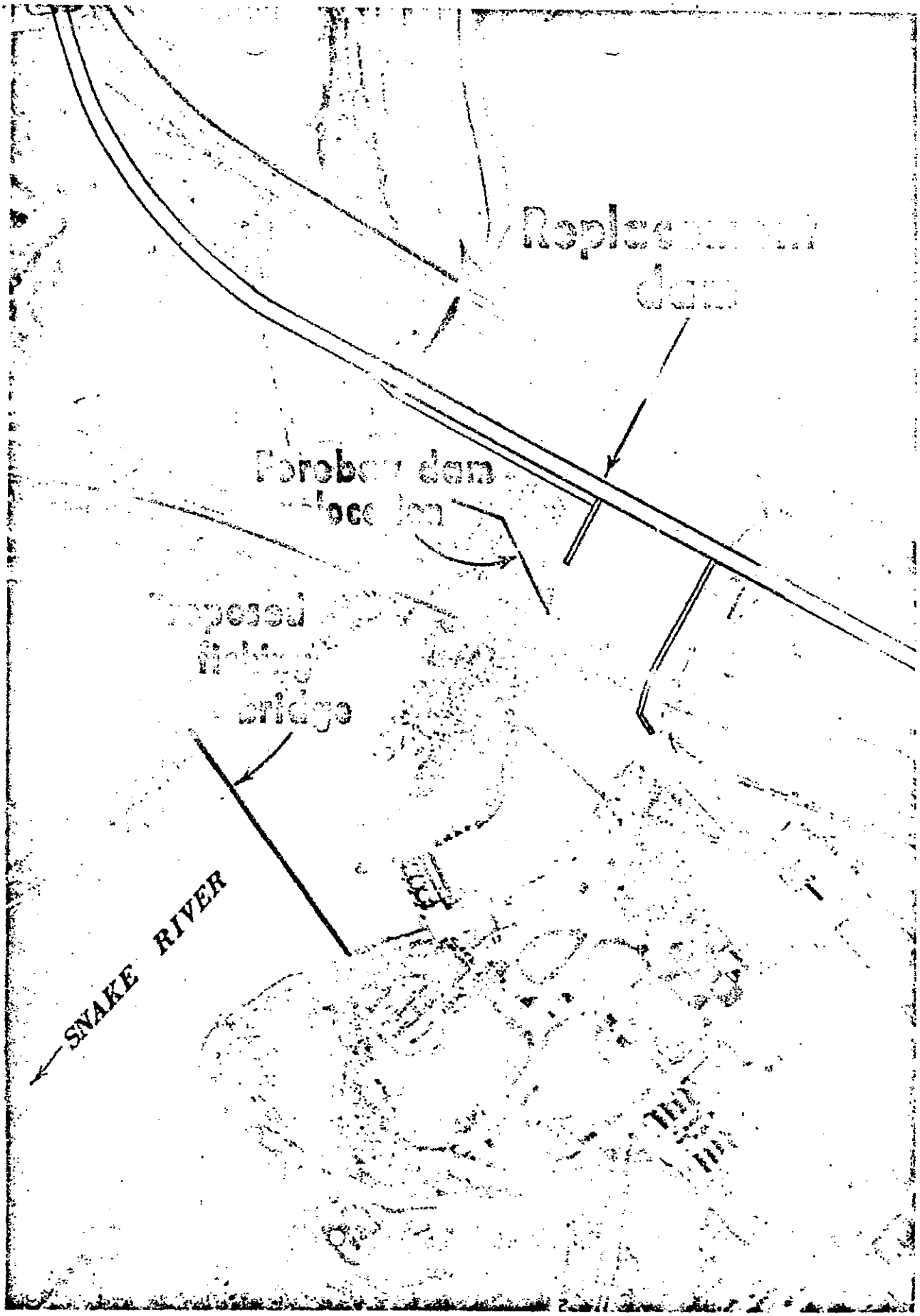
(5) The specific recommendations of the Bureau of Sport Fisheries and Wildlife contained in its August 1968 report be considered in the implementation of the plan.

(6) Basic facilities be constructed to provide for public health and safety of visitors in the vicinity of the dam and the costs of these facilities be nonreimbursable.

(7) A modern two-lane highway crossing be provided on the new American Falls Dam. The incremental cost of constructing this crossing to higher standards than those of the existing crossing be nonreimbursable. If the Idaho Department of Highways provides additional funds, the two-lane highway now included in the plan be redesigned to provide a four-lane highway crossing.

(8) The justification for including provisions for future power development at the new American Falls Dam be reevaluated during preconstruction planning on the dam.

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Exhibit HH

ıdorsed by American Falls
:eholders - Executive Committee,
ley, 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

974

UNITED STATES

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

REGION 1

FINANCIAL STUDY OF PROPOSED COMPLETION OF AMERICAN FALLS POWER PLANT

PLEASE RETURN TO 730

A Century of Conservation

1849 - 1949

Boise, Idaho

June 1949

AF017314

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AF017315

FINANCIAL STUDY OF PROPOSED COMPLETION

OF

AMERICAN FALLS POWER PLANT

Purpose and General Plan

It is proposed that a 30,000-kw power plant be constructed at the existing American Falls Dam. Provision for such a power plant was made at the time of construction of the American Falls Dam by installing four 15-foot diameter penstocks through the right side of the Dam. The United States has water rights at American Falls Dam sufficient to permit the operation of a 30,000-kw power plant during the irrigation season. By contractual arrangements, generation during the winter would be limited to the amount sufficient to enable the United States to generate 10,000 kw by coordinated operation of its Minidoka and American Falls power plants. The primary use of the proposed power plant would be to provide irrigation pumping power for the proposed North Side Pumping Division of the Minidoka Project.

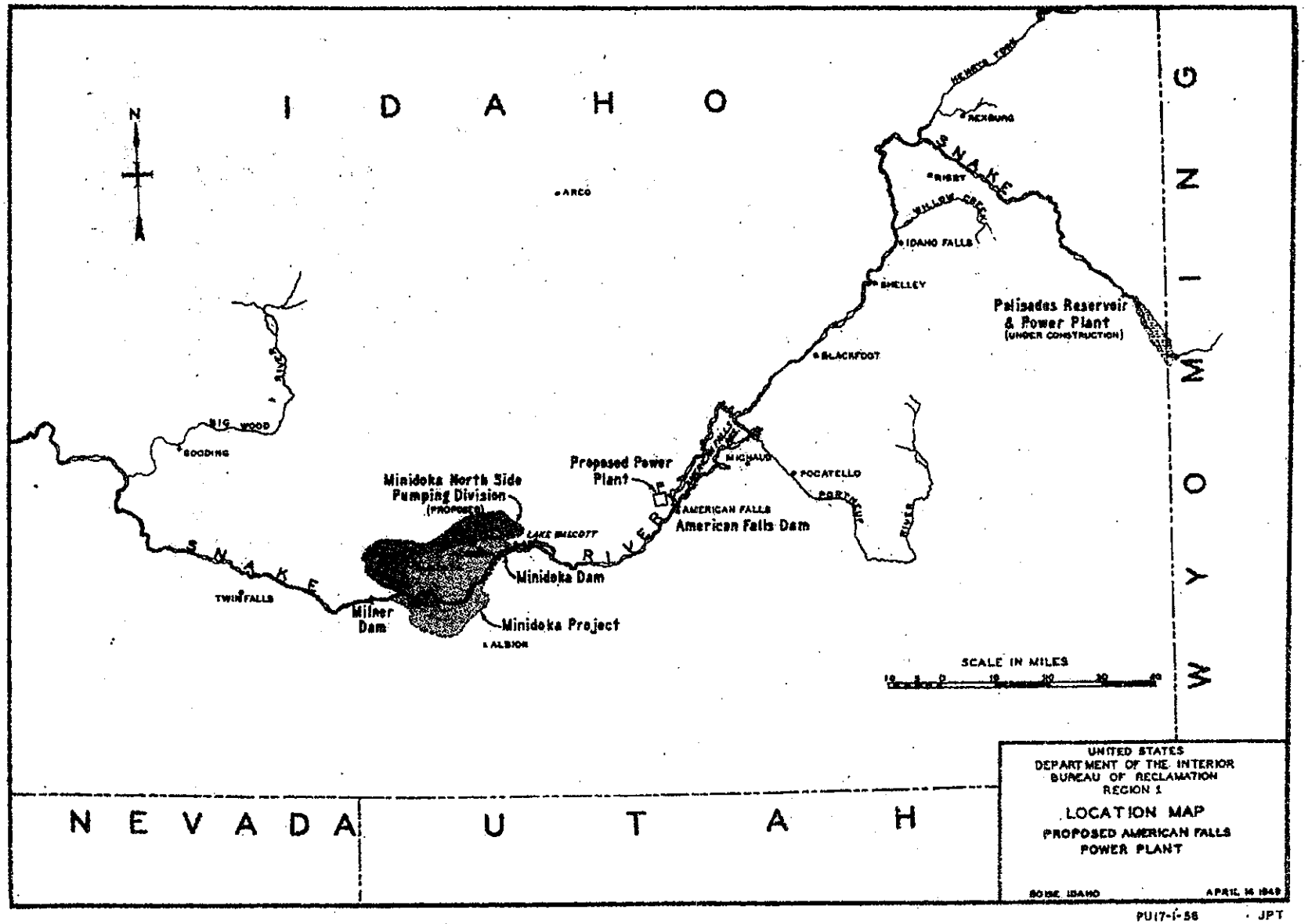
The Minidoka North Side Pumping Division, approximately 35 miles from American Falls Dam, will require 34,000 kilowatts of irrigation pumping power, which can be supplied economically on a reliable basis at approximately three mills per kilowatt-hour from the proposed American Falls power plant and Unit No. 7 of the Minidoka power plant, supplemented as necessary in dry years with power from the authorized Palisades power plant which is located further upstream on the Snake River. Minidoka North Side pumping, together with additional irrigation pumping power requirements in prospect in the vicinity of the Minidoka Project and along the upper Snake River, will exceed the pumping power supply available from Palisades alone. Hence, it is timely to develop the American Falls power plant concurrently with the construction of the North Side Pumping Division.

At present, the Minidoka power plant obtains power for carrying its load during the winter from the Black Canyon power plant of the Boise Project, located on the Payette River near Emmett, Idaho, through interchange arrangements with the Idaho Power Company. Upon completion of the Anderson Ranch Dam and power plant on the Boise River, the joint operation of Black Canyon and Anderson Ranch power plants, as contemplated in H. D. 916 (76th Congress, 3d Session), in order to supply a firm commercial load in addition to irrigation pumping, will require the development of a new source of winter power for the Minidoka Project.

The construction of the American Falls power plant would make possible the use of the limited winter water right at the site,

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IDAHO
WYOMING
NEVADA
UTAH
N
ARCO
HENRYS FORK
REXBURG
SNAKE
RIGBY
WILLOW CREEK
IDAHO FALLS
SHELLEY
Palisades Reservoir
& Power Plant
(UNDER CONSTRUCTION)
BLACKFOOT
BIG WOOD
BOODING
Proposed Power
Plant
Minidoka North Side
Pumping Division
(PROPOSED)
MICHAUD
POCATELLO
PORTNEUF
RIVER
AMERICAN FALLS
American Falls Dam
LAKE WILCOTT
SNAKE
RIVER
Minidoka Dam
TWIN FALLS
Milner
Dam
Minidoka Project
ALBION
SCALE IN MILES
10 5 0 10 20 30 40
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
REGION 1
LOCATION MAP
PROPOSED AMERICAN FALLS
POWER PLANT
BOISE, IDAHO
APRIL 16 1949
PU17-1-56
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and thereby permit the working out of a winter water-saving program consistent with those now in effect, but without the necessity either of continuing to tie up firm power capabilities at the Black Canyon power plant or other federal power plants.

It is the conclusion of this report that construction and operation of the proposed American Falls power plant by the United States would be feasible from the engineering and financial points of view.

American Falls Power Site

Location

The American Falls power site is located on the right bank of the Snake River in section 31,T 7 S, R 31 E, B.M., about 500 feet downstream from the American Falls Dam. (See general plan.)

An old power plant at this site, together with the former Island power plant located on an island in the Snake River between the power site and the present power plant of the Idaho Power Company, was purchased from the Idaho Power Company in 1923, prior to construction of the American Falls Dam. These old power plants have been dismantled.

Idaho Power Company Plant

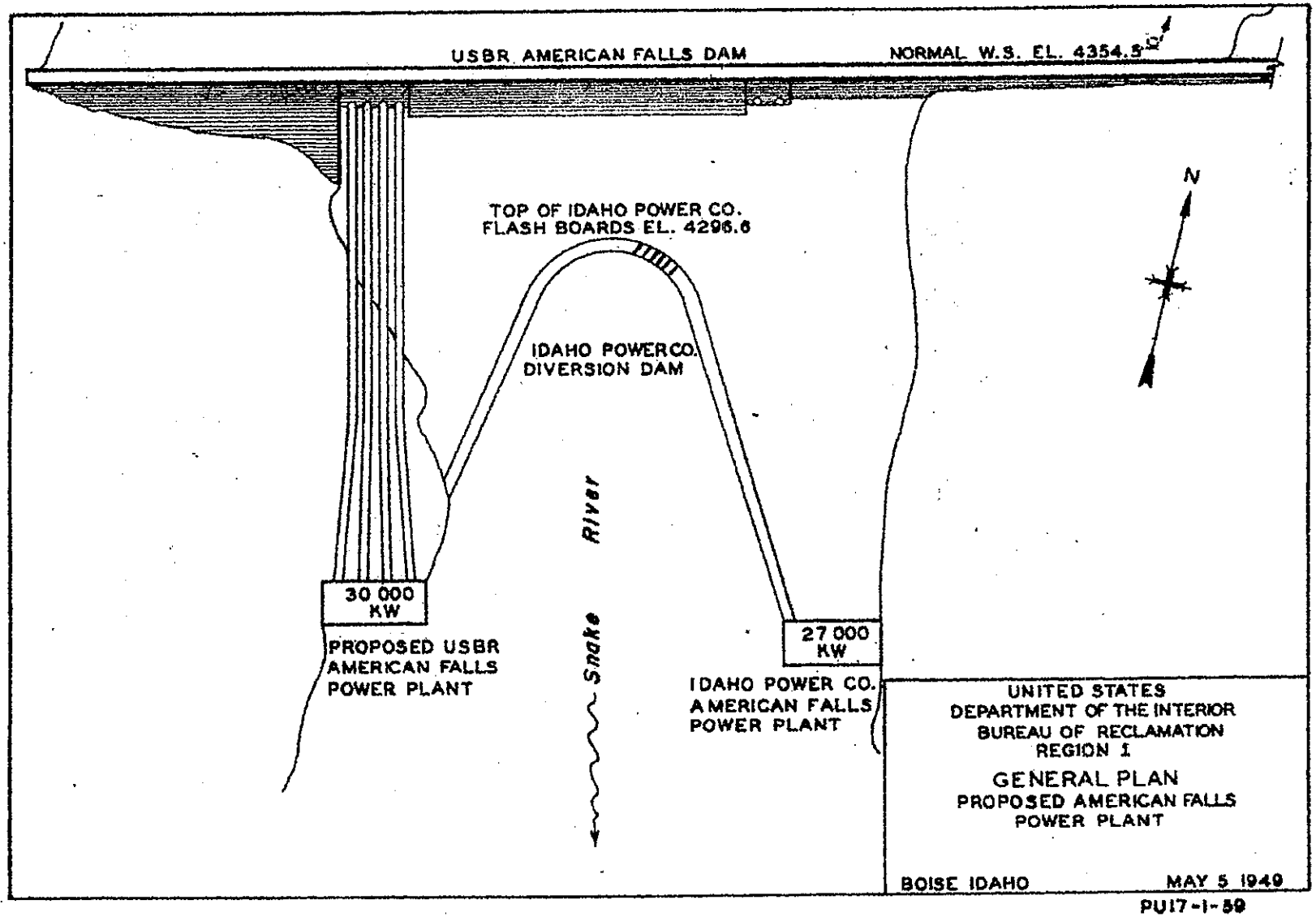
The American Falls power plant of the Idaho Power Company is located on the left bank of the Snake River opposite the government power site. This plant uses only the natural head at the American Falls by means of a diversion dam at the head of the falls in the natural channel below the American Falls Dam, whereas the proposed American Falls power plant would utilize both the head due to the falls and the head developed by the American Falls Dam. The Company plant contains five generating units, having a total rated capacity of 27,000 kilowatts. The first unit of this power plant was installed in 1913, the second and third in 1923 and 1924, and the remaining two in 1927. The diversion dam has a permanent crest at elevation 4291.6 feet, and the maximum head water elevation is increased by means of flashboards to elevation 4296.6. The gross static head with full pond is 49 feet.

Water Rights

Under contract number Ilr-733 dated June 15, 1923, and related deeds of conveyance, the United States acquired from the Idaho Power Company rights-of-way and water rights for the American Falls Dam and Reservoir. This is an abridged description of water rights; for a full description refer to contract Ilr-733. As therein provided,

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USBR AMERICAN FALLS DAM
NORMAL W.S. EL. 4354.5
TOP OF IDAHO POWER CO.
FLASH BOARDS EL. 4296.6
IDAHO POWER CO.
DIVERSION DAM
N
Snake River
30 000
KW
PROPOSED USBR
AMERICAN FALLS
POWER PLANT
27 000
KW
IDAHO POWER CO.
AMERICAN FALLS
POWER PLANT
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
REGION 1
GENERAL PLAN
PROPOSED AMERICAN FALLS
POWER PLANT
BOISE IDAHO
MAY 5 1949
PU17-1-59

the United States, as against the Company, has rights to use for power purposes at American Falls Dam the following maximum amounts of water:

United States Summer Right (Secondary to Idaho Power Company summer right):

April 1 -- 1,500 cfs, increasing uniformly to 5,000 cfs on May 1.
May 1 -- 5,000 cfs, increasing uniformly to 6,000 cfs on June 1.
June 1 to September 15, inclusive -- 6,000 cfs.
September 15 -- 6,000 cfs, decreasing uniformly to 1,500 cfs on October 31.

United States Winter Right (Primary to Idaho Power Company winter right):

November 1 to March 31, inclusive -- Those releases necessary to enable the United States to generate 10,000 kw through coordinated operation of its Minidoka power plant and the proposed American Falls power plant, provided that the Minidoka plant has first made efficient use of water available to it without causing release of water which otherwise might be held for irrigation.

Under the same contract, the Idaho Power Company has reserved out of the rights conveyed to the United States the following water rights for its use at American Falls:

Company Summer Right (Primary to U. S. summer right):

April 1 -- 100 cfs, increasing uniformly to 2,500 cfs on May 1.
May 1 to September 15, inclusive -- 2,500 cfs.
September 15 -- 2,500 cfs, decreasing uniformly to 100 cfs on October 31.

In addition to the above primary summer right, the Company has a tertiary right under the contract to use for power generation at American Falls all summer releases in excess of the Company primary rights and the United States secondary rights stated above.

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Company Storage Rights:

By the same contract, the Idaho Power Company acquired 45,000 acre-feet of primary storage capacity in the American Falls Reservoir with rights to use this capacity equal to irrigation storage rights. This storage capacity is filled each year out of the Company's reserved water right of 300,000 acre-feet which is the first 300,000 acre-feet of storable inflow to the Reservoir after October 1, and the Company may release the 45,000 acre-feet thus stored as it desires within the next thirteen and one-half months. The Company also was granted a secondary storage right to use, during the reservoir refilling period, 255,000 acre-feet of the reservoir capacity for storage and regulation of the remaining reserved water right when such use would not conflict with storage of irrigation water. All but 60,000 acre-feet of the 255,000 must be used by April 1 or be relinquished, and all rights to the secondary storage expire when the Reservoir fills or on June 10, whichever occurs first in any given year.

Water that flows over the Milner irrigation diversion dam (approximately 70 miles downstream from American Falls) enters a canyon and is virtually lost as far as irrigation is concerned. In recognition of this loss, the Company agreed in the 1923 contract to limit its use of 255,000 acre-feet of the above secondary storage rights at American Falls Dam to not exceed those releases necessary to maintain certain flows at the head of Shoshone Falls, downstream from Milner Dam. These flows, provided for the Company's power plants at Twin Falls and Shoshone Falls, vary through the winter as shown in the following tabulation of total flows at Shoshone Falls:

Oct.	1 - Nov. 30	790	cfs
Dec.	1 - Jan. 31	890	"
Feb.	1 - Feb. 12	790	"
Feb.	13 - April 15	690	"
Apr.	16 - June 10	790	"

In order to maintain the above flows, the Company can use the full 255,000 acre-feet of winter storage right. Under past streamflow conditions, however, the maximum use would not have exceeded 182,000 acre-feet.

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November 1 to March 31, inclusive -- Company reserved, as against the United States, the right to use for power at American Falls all water released or wasted in excess of the United States power right.

1934 Water Savings Plan

Because of the series of dry years which occurred during the early 1930's the above contract rights were further modified by contract between the United States and the Idaho Power Company, dated October 1, 1934, Symbol and No. Ilr-801. The objective sought in the contract was to curtail the winter release of water by the Company at American Falls Dam and to permit the storage of the saved water for irrigation purposes. Under this arrangement, the Company is permitted to use at American Falls any water in addition to its own released from the American Falls Reservoir, and the release of 255,000 acre-feet of the Company's secondary storage water was made subject to the control of the United States within limits stated below. Further, this contract sets aside the right of the Company to have secondary storage water released after March 15.

The contract provides for releases from American Falls Reservoir of not to exceed the amounts required for the following flows at Shoshone Falls:

Oct. 1 - Nov. 30	790 cfs
Dec. 1 - Jan. 31	870 "
Feb. 1 - Feb. 12	790 "
Feb. 13 - Mar. 15	690 "

In years of low runoff, this 1934 water-savings plan has resulted in curtailed power generation during the winter at the Minidoka power plant of the United States and reduction in generation at the Shoshone Falls and Twin Falls power plants of the Idaho Power Company. Compensating arrangements were provided by the contract. This contract will automatically terminate at the time the United States places its American Falls power plant in operation and, therefore, a new arrangement to continue the water-savings plan in effect is suggested. (See discussion under "Power Production.")

Analysis of past streamflow records indicates that, in a critical period like that which occurred in 1932 to 1935, inclusive, when American Falls Reservoir failed to fill, the above curtailment of power releases at Milner Dam would have increased the yield of upstream irrigation reservoirs by an average of 45,000 acre-feet annually. Similarly, the curtailment of power water releases for the Minidoka power plant would have increased the irrigation storage yield an average of 460,000 acre-feet per year.

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Description of Proposed Power Facilities

Facilities proposed, with such modifications, omissions or additions to the works as the Secretary of the Interior may find proper for carrying out the plan, consist of a powerhouse located on the right bank of the river at the foot of the American Falls directly downstream from American Falls Dam. Four 15-foot diameter steel penstocks will be connected to the existing penstock openings in the American Falls Dam to convey water to the powerhouse. The powerhouse will contain four 7,500-kw generators, direct connected to four vertical shaft turbines. Outdoor transformers to step up the voltage for transmission, and the necessary switching facilities will be located in an outdoor switchyard adjacent to the power plant, and a transmission line, planned tentatively to be of 115 kilovolt capacity, will be provided to connect the American Falls power plant and the Bureau of Reclamation's existing Minidoka power plant and to connect with transmission lines of the proposed Minidoka North Side Pumping Division.

Power Production

Studies of the estimated power production by the proposed power plant have been based upon water supply records for the 20-year period October 1927 to September 1947, inclusive. This period includes the lowest streamflows recorded on the Upper Snake River. These occurred during the extremely dry years in the early 1930's, and accordingly the period selected provides a conservative estimate of prospective plant operation. The studies take into account the effects of regulation by, and the proposed winter water-savings program in connection with, the authorized Palisades Reservoir and the prospective additional irrigation uses of water to be made possible by addition of that reservoir on the Snake River. Also, the estimates of power generation reflect the contract limitations on power generation by the United States at American Falls as outlined above, and assume continuation of water-saving practices in winter power operations substantially like those provided by the 1934 contract. Because of the storage drafts upon the American Falls Reservoir for irrigation purposes, the gross head for generation of power will vary between 107 feet and 51 feet. The resulting estimates of power production, summarized in the following tabulation (Table 1) show that the American Falls power plant would generate an average of 119.8 million kilowatt-hours per year.

In years of less-than-average generation, it is proposed that any deficiency for meeting pumping load requirements will be supplied from the Palisades power plant or other Federal power plants in the areas.

During the nonirrigation season, the production at American Falls power plant reaches its highest levels at times of low streamflows at Minidoka because of the inverse operation of the winter

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TABLE 1

POWER GENERATION

American Falls Power Plant, Idaho

Month	Critical Year (1934)	Average Year (1928 - 1947)
	Millions of Kilowatt-Hours	
October	5.8	6.2
November	3.4	2.3
December	4.3	2.9
January	4.3	3.2
February	4.1	2.2
March	3.3	2.7
April	11.4	10.7
May	20.5	20.5
June	15.5	20.9
July	14.1	19.9
August	9.1	16.9
September	3.0	11.4
Total	98.8	119.8

water-right provisions. In six of the twenty years studied, the water supply even with the water-savings program in operation would have been sufficient to permit normal generation by the United States at the Minidoka plant. Hence, in those years it would not have been necessary to have operated the American Falls plant in order to exercise the Government's full contract right as to winter generation, except during maintenance outages at the Minidoka plant.

In order to estimate the probable use of American Falls power plant energy, it is necessary to consider:

(1) Energy requirements of the North Side Pumping Division.
(2) Effect of water-saving measures on Minidoka power plant of the United States.
(3) Effect of water-saving measures on the Shoshone Falls and Twin Falls power plants of the Idaho Power Company.
(4) Effect of water-saving measures on the American Falls plant of the Idaho Power Company.
(5) Generation in excess of above requirements.

Studies of the probable power production with Palisades Reservoir in operation have been made to estimate the production at Idaho Power Company plants with water releases as they would be under the 1923 contract and with releases as they would be if modified to a pattern like that provided in the 1934 contract. By reason of the

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large, uniform flows entering the Snake River from the Thousand Springs, which appear to be adequate for all Company plants below the Springs, it has been assumed that water-savings measures at American Falls Dam would have negligible effect at those plants downstream from the Springs. The two plants of the Company on the River above the Thousand Springs, Shoshone Falls and Twin Falls, would be affected. In terms of electric energy, the average curtailment of production of the two Company plants is estimated to be distributed by months as follows:

Month	Millions of Kilowatt-Hours
December	0.3
January	0.3
February	0
March	1.5
April	2.5
May	4.0
June (1-10th)	1.3

Energy would be available from the proposed American Falls power plant to offset the reduction of output at the Company plants in April, May, June, and October of an average year. Offsetting energy for the small curtailments in December, January, March, and part of May could not be provided at the time of the curtailment, but could be covered by exchange energy in April. Including an allowance for transmission losses, it is estimated that an average of 9.9 million kilowatt-hours per year of American Falls energy would be required for this replacement.

The remaining Company power plant that would be affected by a winter water-saving program is the existing power plant just below the American Falls. At this site, the Company has no primary water right from November 1 to April 1, but does have the right to pass releases from its primary storage and its limited secondary storage releases through the plant together with any water that is wasted. Full exercise of the United States winter right to generate 10,000 kilowatts through coordination of its American Falls and Minidoka power plants, coupled with the agreement to release only sufficient water from American Falls to maintain stated flows at Shoshone Falls, will require that substantially all winter water be passed through the proposed government power plant at American Falls in years of critical streamflow, except primary storage water if released by the Company during the winter. Under these circumstances, the Company's American Falls plant possibly would not be operated, and because of its limited water right no offsetting exchange energy would be required. Thus, at times of critical streamflows, nearly all water would pass through the higher head plant, resulting in more effective use of available water. The Company's primary right to generate summer power at its American Falls power plant would not be interfered with.

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Continuation of the present water-savings program will require continued reduction in winter power production at the Minidoka power plant of the United States in years of low runoff; but through use of the United States' contractual primary winter right at American Falls, power can be made available to offset this reduction. Estimates of this energy totaling 12.9 million kilowatt-hours per year also appear in Table 2.

Table 2 is completed by showing the remaining energy divided as to use for irrigation pumping and as excess above pumping requirements.

TABLE 2

INDICATED USE OF AMERICAN FALLS ENERGY
20-YEAR AVERAGE

Month	Irrig. Pumping Minidoka North Side Division	Replacement For Water Savings		Trans-mission Losses	Surplus	Total Generation
		To Minidoka Project	To Idaho Power Co. Plants			
	Millions of Kilowatt-Hours					
Oct.	2.9	-	-	.2	3.1	6.2
Nov.	-	2.2	-	.1	-	2.3
Dec.	-	2.8	-	.1	-	2.9
Jan.	-	3.1	-	.1	-	3.2
Feb.	-	2.1	-	.1	-	2.2
Mar.	-	2.7	-	-	-	2.7
Apr.	.9	-	4.8	.1	4.9	10.7
May	15.6	-	3.8	1.1	-	20.5
June	14.7	-	1.3	1.0	3.9	20.9
July	18.7	-	-	1.2	-	19.9
Aug.	15.8	-	-	1.1	-	16.9
Sept.	10.6	-	-	.8	-	11.4
Totals	79.2	12.9	9.9	5.9	11.9	119.8

AF017326

Estimated Costs

The costs to be met out of revenues expected to be derived from operation of the proposed power plant and transmission facilities include the construction costs, the operation and maintenance costs and provision for replacements.

Construction Cost

The construction cost of the power plant and transmission facilities is estimated to be $6,591,000 at January 1949 price levels. The estimate includes the following portion of costs already incurred in connection with the American Falls Dam:

(a) Right-of-way and water rights, allocated by the Secretary of the Interior	$293,979
(b) Penstocks through the Dam	28,898
(c) Repairs to penstocks (1941)	5,397
	$328,274

The total estimated cost, including the above $328,274, is tabulated below by features:

Production Plant	
Structures and improvements	$1,755,000
Penstocks (through Dam)	34,295
Penstocks	555,000
Turbines and generators	2,134,000
Accessory electric equipment	303,000
Miscellaneous power plant equipment	213,000
General plant and communications	100,000
Right-of-way (accrued)	293,979
Subtotal	$5,388,274
Transmission Plant	
Transmission line	$ 665,000
Switchyard	538,000
Subtotal	$1,203,000
Total construction cost	$6,591,274

Operation, Maintenance and Replacement Costs

Annual costs of operating and maintaining the proposed development after all facilities are in operation are estimated at $79,900 for the power plant and switchyard and $5,600 for the transmission

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line and terminal equipment, making the total annual operation and maintenance cost $85,500. The annual provision for replacements covering all facilities proposed herein is estimated at $60,910 per year. Taking into account a development period during which only part of the equipment would be in service, the total cost of operation, maintenance and replacements during the assumed repayment period would be $8,326,460.

Power Sales and Revenues

As indicated in the opening part of this study, the principal purpose to be served by the proposed completion of American Falls power plant would be the furnishing of irrigation pumping power for the recommended North Side Pumping Division of the Minidoka Project. This pumping Project (Project Planning Report No. 1-5.53.1-1, dated April 1949) will irrigate 77,650 acres of land adjoining the present Minidoka Project as indicated on the attached location map. A pumping plant on the north shore of Milner Lake will lift Snake River water 163 feet for irrigation of 13,650 acres. The remainder of the area, 64,000 acres, will be served by pumping from some 309 wells with an average pumping head of approximately 200 feet. This pumping load and the associated transmission losses will require a power supply of about 34,000 kilowatts. It is estimated that privately owned lands within the North Side Pumping Division boundaries will require 21 additional wells of approximately the same size, and furthermore it is expected that lands to the north of the Division will be developed by small private companies; one such development is now in operation.

Privately financed operators are also making application for power to develop lands in the Raft River drainage area by pumping from wells.

It has been noted previously that the total pumping requirement will exceed the capability of the American Falls power plant within a few years, and hence it is concluded that American Falls power plant irrigation season production will be completely covered by contracts within a very few years. Also, it is evident that this area will, in addition, require power from other sources such as the Unit No. 7 of the Minidoka power plant, the Palisades power plant and the Anderson Ranch power plant.

It is estimated that, when the pumping loads have developed to equal or exceed the capability of the American Falls power plant, this plant will supply an average of 79.2 million kilowatt-hours per year for this purpose, exclusive of transmission losses. Evaluated at three mills per kilowatt-hour, these sales would amount to $237,600 per year.

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Power and energy to be generated during the nonirrigation season under limitations of the 1923 contract with the Idaho Power Company are restricted to the amount of power necessary to enable the United States to supply from the American Falls and Minidoka plants a 10,000 kilowatt peak load in the area comprising chiefly the Minidoka Project and its extensions. The present load in that area now exceeds 10,000 kilowatts, and further continued load growth is in prospect. Therefore, to supply such a load, it is estimated that future operations during the American Falls power plant repayment period will require maximum utilization of available water for generation of winter energy at American Falls within the limits of the contract. Excepting rare circumstances, the water releases at American Falls will permit generation sufficient to supply loads at the now prevalent 68 percent monthly load factor, and in many years the water supply as limited by the 1923 contract would be adequate for generation of 10,000 kilowatts by the two plants almost continuously. On the basis of the above, it has been assumed that the American Falls power plant would operate up to 95 percent load factor during the winter within the limit of available water supply. The generation of energy at American Falls to coordinate with Minidoka power production in the winter will range from zero to an estimated maximum of 20.5 million kilowatt-hours per year, and the estimated 20-year average would be 12.9 million kilowatt-hours annually.

As mentioned under "Power Production" and listed in Table 2, replacement energy for the water saving curtailments of Company generation at Shoshone Falls and Twin Falls power plants would average 9.9 million kilowatt-hours per year. The average annual winter generation available at the proposed American Falls power plant to meet the reductions above indicated as resulting from continuation of the water savings program would be 22.8 million kilowatt-hours per year, and that average requirement can be met from the American Falls plant.

Considering the variations of this winter production from year to year and the fact that American Falls power plant would have to be held in readiness to produce energy on relatively short notice depending upon the operations at the Minidoka power plant, the winter production is evaluated by applying the following capacity and energy charges:

> Repayment of the proposed plant investment requires approximately $132,000 per year or $11,000 per month, but since contract limitations on use of water provide for use of only one-third of the capacity for generation during the 5 winter months, the yearly capacity charge amounts to 5 x $11,000/3 or $18,300. An energy charge of 2 mills per kilowatt-hour applied to the above 22.8 million kilowatt-hours would amount to $45,600. Thus the average value of the winter capacity and energy would be $63,900 per year.

AF017329

Winter generation at the American Falls plant being justified primarily as part of a winter water-savings program, the foregoing basis of evaluation of that generation is being considered as a possible one for charging those who are determined finally to be the principal beneficiaries of that water-savings program.

Cost Allocation and Pay-out Analysis

The proposed power plant is dealt with in the Regional Director's Report of April 12, 1949, on the North Side Pumping Division of the Minidoka Project as the recommended ultimate source of irrigation pumping power. By way of supporting the finding of financial feasibility there made concerning the North Side Pumping Division, which finding was premised on an assumed rate for irrigation pumping power, this complementary allocation of costs and pay-out analysis of the American Falls power plant is made.

All costs of the proposed American Falls power development are treated herein as being properly allocable to production of power for irrigation pumping because the primary purpose served by the plant would be the production of power for a Federal irrigation project, and further for the reason that water-right limitations preclude the production of firm commercial power by this development. Hence, as permitted by the Reclamation Project Act of 1939, for rate making purposes, the investment in plant in service is regarded as being a noninterest bearing investment.

The operation of the American Falls power plant will be coordinated with that of the Palisades power plant in order to meet better the various loads in the area and to make more efficient use of the water available for power production at both sites. Hence the costs of and revenues from both plants were pooled in a single pay-out analysis. It was considered that repayment of the capital costs of the two-plant power system would be effected within 50 years from the time the last unit of the Palisades plant is placed in service. Allowing a development period of six years for Palisades power plant, and taking account of the earlier schedule for initial operation of the American Falls power plant, the total repayment period would be 57 years, which is well within the useful life of hydroelectric projects.

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The total costs assignable for repayment from the system power revenues during the 57-year repayment period are as follows:

Construction Costs:

Power System	$29,633,474
Irrigation Assistance (Palisades Project)	11,419,400
Operating Expenses:	
Operation and Maintenance	20,696,300
Provision for Replacements	17,257,560
Total	$79,006,734

In estimating revenues that reasonably can be expected to be realized during the pay-out period, there have been applied average power rates determined in accordance with rate standards of section 9 of the Reclamation Project Act of 1939. These rates are 4 mills, 3 mills, and 2 mills, respectively, for firm, irrigation pumping, and nonfirm energy. Moreover, the irrigation pumping power rate is in agreement with that used in determining the feasibility of the North Side Pumping Division of the Minidoka Project. The system power revenues obtained by application of these average rates are as follows:

Class of Energy	Revenue
Firm	$36,464,400
Irrigation Pumping	16,710,600
Nonfirm	29,107,700
Total	$82,282,700

The results of the combined pay-out study show that the above revenues are sufficient to cover all costs assignable for repayment from power revenues during the assumed repayment period, with a surplus of $3,275,966. Since the results are predicated on the pumping power rates, used in determining the feasibility of the North Side Pumping Division, and on the power rate and pay-out requirements of the Federal Reclamation Laws and departmental power policies, it follows that the two-plant system is feasible from a financial standpoint.

AF017331

Exhibit JJ

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 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,

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 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 33 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 released 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 $19,000,000 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.

IDAHO POWER COMPANY

R A Hogg
Presented to Executive Committee
February 27, 1973

Exhibit KK

AMERICAN FALLS DAM, UPPER SNAKE RIVER PROJECT, IDAHO

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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

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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.

RAHaggard

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 those 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.

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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 LL

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	2,006	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)

MISCELLANEOUS

NUMBER	USER	JACKSN	PALSDS	PL USR	PL WWS	MNRY L	ISL PK	GRSY L	RIRIB AM	WHS AM	FLS L	WLCTRN	LTF PL	PWR RENTAL	TOTAL
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	0 179895.0
99999410	ARTESIAN IRR	0	0	60	0	0	0	0	0	0	2794	0	0	0	0 2854.0
99999500	SNAKE UNALC BK	0	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 0.0
99999550	FRE-MAD MISC	0	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	0	2932	0	0 23379.3
99999700	MITIGATION INC	0	16360	0	2620	0	0	0	80500	0	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 0.0
99999950	MILNER	0	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 0.0
	TOTAL	3923	104013	15557	3180	0	20447	0	80500	0	56019	0	13301	157000	0 453940.7

Preliminary

Exhibit MM

fpc.

APR 3 1975

POWER PLANT CONSTRUCTION
RECEIVED
APR 11 1975

POSTED 3
COPIES LAT

ROUTING	ACTION	COMMT	INFO
JRC			
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Return to Act By
Action Taken By
Copy to: Jack Karaher July 7, 1976

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman;
William L. Springer, and Don S. Smith.

Idaho Power Company) Project No. 2736

ORDER ISSUING MAJOR LICENSE (UNCONSTRUCTED) AND PERMITTING WITHDRAWAL OF INTERVENTION

(Issued March 31, 1975)

On September 25, 1973, Idaho Power Company (Applicant) of Boise, Idaho, filed application for major license under Section 4(e) of the Federal Power Act (Act), 16 U.S.C. §797(e), to authorize the construction, operation and maintenance of the proposed American Falls Project No. 2736, which will be located at the U.S. Department of the Interior, Bureau of Reclamation (Reclamation), American Falls Replacement Dam on the Snake River. The application was revised or supplemented on February 1 and 6, March 18, April 16, June 3, July 15 and 31, August 9 and 26, September 30, October 31, and November 15, 1974.

Notice of the application was issued December 5, 1973, with a return date for protests or petitions to intervene of January 28, 1974. As hereinafter discussed, four petitions to intervene were received and granted by the Commission, and the Idaho Public Utilities Commission filed Notice of Intervention under the Commission's Rules of Practice and Procedure, 18 C.F.R. §1.8(a)(1). Notice was published in the Federal Register on December 14, 1973, 38 Fed. Reg. 34496.

The American Falls Powerplant will have a total installed (nameplate) capacity of 92.4 mW. The power plant and appurtenant facilities will be located near the City of American Falls, Power County, Idaho, about 25 miles southwest of Pocatello, Idaho. The project will affect lands and navigable waters of the United States and a Government dam.

The project will consist of (1) three 18-foot steel-lined penstocks extending approximately 240 feet downstream to the centerline of project turbines from a connection with similar penstocks and intake works to be constructed as part of the Government dam; (2) reinforced concrete powerhouse containing

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three adjustable-blade turbines each rated 42,000 hp at 88-foot net head connected to three vertical-shaft, semi-outdoor type generators each rated 34.2 mVA (30.8 mW at 0.9 p.f.), a 175-ton gantry crane, and other related electrical and mechanical equipment; (3) switchyard upstream from the powerhouse containing one three-phase transformer rated apporximately 125 mVA, 13.8/138 kV, with circuit breakers and disconnect switches; (4) 138-kV steel-pole transmission line extending approximately 2,100 feet along the right bank and across the Snake River to the 138-kV switchyard of the existing American Falls development of the Applicant; (5) tailrace; (6) recreational facilities consisting of a public parking area, three small landscaped parks with picnic tables, a potable water supply and sanitary facilities, a public access area on the west bank of the Snake River to accommodate bank fishing, and boat launching facilities; and (7) appurtenant facilities. The power will be used for public utility purposes.

The Honorable Cecil D. Andrus, Governor of the State of Idaho, petitioned to intervene in support of the application on January 28, 1974, stating that the water and power needs of all of Idaho's citizens would be best satisfied by the early issuance of a license. We granted intervention by order dated February 8, 1974.

The American Fall Reservoir District's (District) petition in support of application was filed January 25, 1974. Its stated interest was in the expeditious granting of a license.

The Idaho Fish and Game Commission (IFG) filed its petition on January 28, 1974, in order to be heard and report recommendations regarding the effect Project No. 2736 may have upon fish and wildlife resources. On September 3, 1974, IFG made motion to withdraw its intervention, as it was of the opinion that the July 2, 1974, agreement between itself and District, herein noted, provides satisfactory mitigation of potential adverse fisheries impact from the project. We herein grant IFG's motion.

The Idaho Public Utilities Commission (IPUC) filed its Notice of Intervention on January 10, 1974. By letter dated August 16, 1974, IPUC stated its unqualified support for the project, urging us to expeditiously issue the license herein. By our order dated February 20, 1974, we granted the petitions to intervene filed by the District and IFG.

On June 12, 1974, we allowed an intervention on the timely filed petition of the Shoshone-Bannock Tribes (Tribes) of the Fort Hall Indian Reservation, Idaho. The Tribes

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alleged that there are tribal lands within the boundary of Project No. 2736, and that they are entitled to receive a reasonable annual charge for the use thereof under §10(e) of the Act. Applicant filed an answer on March 1, 1974, and stated that no tribal lands are encompassed within project boundaries.

We invited Interior to comment on the petition by the Tribes by letter dated February 21, 1974. By letter dated May 21, 1974, the Associate Solicitor for the Division of Indian Affairs stated his opinion that the operation of the American Falls Replacement Dam and Reservoir "affects the Fort Hall Indian Reservation."

We granted intervention to Tribes solely because of its status as a spaceholder in the Reservoir above American Falls Dam and as a landowner in the general area of Project No. 2736. In so doing, we specifically said that annual charges should be exacted only if Indian tribal lands are within the boundaries of the hydroelectric project subject to our jurisdiction. See 16 U.S.C. §§796(2); 797(e); 803(e). The proposed hydroelectric project includes only clearly defined areas downstream of the Replacement Dam, and does not include the dam or the reservoir. Our records further indicate that no tribal lands are included within the boundaries of the proposed hydroelectric project and, thus, no basis exists for assessing annual charges for such use.

Additionally, we note that Applicant has no control over the water releases at the Replacement Dam, nor can it affect Tribes' storage rights in the reservoir. In short, it is our opinion that Project No. 2736 will not affect tribal lands by its operation under the terms of the license issued herein.

By letter dated November 15, 1974, Applicant transmitted a copy of the Water Quality Certification issued by the State of Idaho pursuant to Section 401 of the Federal Water Pollution Control Act Amendments of 1972 (Amendments of 1972), 33 U.S.C. §1341. The Certification dated November 13, 1974, was issued upon certain conditions provided for herein to insure maintenance of water quality in the Snake River. By letter dated November 26, 1974, the Commission's Secretary transmitted the certification to the U.S. Environmental Protection Agency (EPA) pursuant to EPA's Regulations, 40 C.F.R. §123.11(b)(1974).

On the matter of water quality, two further permits are involved in the licensing of this project. By letter dated October 31, 1974, Applicant transmitted a National Pollutant Discharge Elimination System (NPDES) discharge permit under Section 402 of the Amendments of 1972, 33 U.S.C. §1342, by EPA

Region X, for the City of American Falls' municipal treatment plant's discharge into the Snake River. Under Article 4 of the license Applicant will submit "as-built" drawings of the project, which will show any major structures in the project area, including the above-mentioned treatment plant and the location of the discharge into the Snake River.

By letter dated February 11, 1975, Applicant transmitted a NPDES discharge permit issued by EPA Region X for a wastewater discharge from the project works. The permit became effective on March 6, 1975. Pursuant to Article 4 of the license, Applicant will also submit "as-built" information on this wastewater discharge into the Snake River.

This is not the only application for license for an American Falls project to have been before this Commission. There currently exists at American Falls a 27.5mW power facility owned by Idaho Power Company which was a part of application for major license in Project No. 2258, filed February 13, 1959. By letter dated December 16, 1969, the United States Department of the Interior (Interior) requested that we hold in abeyance the issuance of the license in Project No. 2258 until the problems arising out of the contemplated replacement of the American Falls Dam had been resolved. As such problems have been disposed of pursuant to the Act of December 28, 1973, we issued a license for the American Falls Project No. 2258 on March 31, 1975.

The existing American Falls Dam was constructed by Reclamation in 1927 as part of the Minidoka Reclamation Project. Within a short time an alkali/aggregate reaction took place in the dam, leading to abnormalities, cracking, and general deterioration over the years. At present, Reclamation has reduced the storage in the reservoir behind the dam to approximately 2/3 capacity for safety purposes.

The Act of December 28, 1973, 87 Stat. 704, in pertinent part authorizes the Secretary of the Interior (Secretary) to enter into agreements with the American Falls Reservoir District (District) authorizing the District to finance and construct a Replacement Dam at American Falls, title to which will pass to Reclamation upon its substantial completion. The Act of December 28, 1973, deems the Replacement Dam to be a Government dam, as defined in Section 3(10) of the Federal Power Act. 16 U.S.C. §796(10).

Pursuant to the 1973 Act the District, as constructing agency, may execute contracts with an appropriate non-Federal entity for use of the falling water leaving the dam for power

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generation, which contract shall provide for a monetary return to the District to defray the cost of construction of the Replacement Dam. District may also contract with a non-Federal entity to coordinate construction of the hydroelectric facilities and the Replacement Dam, such facilities being the subject of this order.

Reclamation developed a Draft Environmental Impact Statement (DEIS) on the American Falls Dam Replacement Program to accompany the legislative process which led to the enactment of the Act of December 28, 1973. The DEIS was made available to the Council on Environmental Quality (CEQ) and a wide range of agencies, organizations, and individuals on May 17, 1973. Pursuant to §2.81 and §4.41 of the Commissions Rules, 18 C.F.R. §2.81 and §4.41, Applicant submitted its Exhibit W (environmental report). Reclamation and Commission Staff coordinated their independent analyses of the environmental impacts of the Replacement Dam Program, considered and reviewed comments received on the DEIS, and developed a Final Environmental Impact Statement (FEIS), designated as INT FES 74-60, which was made available to CEQ and the public on November 13, 1974. As Reclamation and Staff agreed that the major impacts of the Program would be attributable to the Replacement Dam itself, Reclamation served as lead agency for the FEIS, as suggested in CEQ's guidelines, 40 C.F.R. §1500.7(b) (1974). Staff contributed assistance with respect to this Commission's area of jurisdiction and expertise.

On the basis of the information in the FEIS and other data on file with the Commission, we believe that the beneficial effects to be derived from Project No. 2736 outweigh the adverse effects upon the environment. We discuss hereinafter the relevant environmental impacts which we have considered pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. §4432 (2)(c).

Construction of the Replacement Dam and power plant will result in the loss of a 14-acre forebay located between the existing powerhouse and dam. This area provides an important and substantial fishery for rainbow trout entering the forebay from the upstream reservoir. In 1971 alone the fishery provided fishermen with about 37,500 recreation hours and a take of 13,700 fish. The forebay fishery is a prime element in the lives of many local citizens, serving as a source of food, a recreation opportunity, and a social gathering place.

The area of the tailwater at the existing powerhouse provides a good sport fishery also. Without adequate oxygenation of water passing through the proposed penstocks, these fish would continue downstream in search of sufficient DO levels.

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Through an agreement dated July 2, 1974, the District will provide the Idaho Fish and Game Commission (IFG) with $875,000 as mitigation for the loss of the forebay and the associated fishery. Of that sum, $575,000 will be for construction and $300,000 for operation and maintenance of facilities provided. Through the above agreement, IFG will provide for some or all of the following facilities:

a. Three 400' x 12' x 3' concrete raceways at the American Falls Hatchery owned and operated by IFG.

b. Acquisition, construction, and impoundment of an off-stream fishing area.

c. A fishing access bridge across the Snake River below American Falls Dam.

d. Improved access to the river below the project area and upstream of Lake Walcott.

While we recognize that the loss of the forebay will have a deleterious effect upon fishery resources, we believe that the agreement and the conditions required herein will substantially mitigate this loss.

During the summer months, diversion through the powerhouse of all or nearly all of the water passing the dam would result in a decrease in the quality of water in the Snake River downstream. During these warmer months, dissolved oxygen concentration in the storage reservoir would often fall below acceptable levels for fish. Under current operations, releases through the dam into the forebay result in extensive agitation and reoxygenation of the water prior to passage downstream. Elimination of the forebay and forebay releases of water would result in the direct passage of water from the reservoir through the proposed penstocks and turbines to the river downstream with little or no opportunity for improving oxygen conditions. When oxygen levels are low (3 to 4 mg/liter or lower) in the reservoir, water released into the river downstream via the powerhouse would not meet Idaho water quality standards for dissolved oxygen content (6 mg/liter or 90% saturation, whichever is greater). By letter dated July 1, 1974, the Idaho Department of Environmental and Community Services requested approval by

AFF007843

EPA of a variance to State water quality standards in the stretch of the Snake River between American Falls and downstream Lake Walcott whereby the 90% saturation requirement would be waived.

In order to meet Idaho's water quality standards for oxygen, the District will construct, maintain, and operate an oxygen injection system directly into the dam penstocks. As a part of this system the District will also construct, maintain, and operate a water quality monitoring system downstream of the dam and powerhouse. In addition, the District will test two other oxygen injection systems: (1) an injection by coarse bubble diffusers upstream of the penstocks, and (2) upstream injection by fine bubble diffusers. Based on the test results, either of the above alternate systems may replace the direct penstock injection systems or serve as a backup or supplementary system if needed. Whatever the system or systems employed, the oxygen injection rate will be controlled through the oxygen monitoring system to satisfy State water quality requirements and to ensure efficient system operation. We believe that any potential water quality problem attributable to the Replacement Dam Program would be adequately provided for by this system. By Article 46 we are requiring Applicant to cooperate in the installation, maintenance and operation of the system, and to assure that procedures exist so that Reclamation and the Idaho Department of Health and Welfare (IDHW) will be immediately notified if water quality drops below the approved State standard so that appropriate action may be taken to restore water quality.

Nearly all of the fish moving downstream from the reservoir after construction of the new dam and powerhouse will pass through the turbines. The mortality rate of these fish will be higher than it is for fish under the present situation. Estimates provided by the Applicant predict that smaller fish (12 inches or less) will experience approximately 5 to 10 percent mortality. Larger fish will encounter, however, a somewhat higher mortality rate on passage through the turbines. More than likely turbine mortality rates will be directly related to fish size, although absolute values cannot be determined without testing under actual conditions.

As the Applicant does not propose mitigation for fish losses resulting from turbine mortality, and since the impact could be substantial, we are requiring the Applicant to file for Commission approval plans for a 3-year turbine mortality study to commence after the new dam and powerhouse have been constructed and are fully operational. The Applicant will prepare the research plan in cooperation with appropriate State and Federal fishery agencies. We believe that by this approach we can best address the potential concerns which are not at this time adequately quantifiable.

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During construction of the project works, turbidity from suspended solids will increase in the Snake River downstream. In addition to rendering the river less appealing from an aesthetic point of view, the suspended solids will tend to settle out and interfere with and reduce the production of food-chain aquatic organisms. Both impacts should be short-term and minor in nature.

Construction activities will require a maximum force of approximately 500 workers during the peak construction period lasting about two years. Some of these workers will come from the local area; the rest will move to this area and remain only temporarily. It would be expected that a portion of the workers' payrolls would be spent in surrounding towns and cities. The population increase will also be accompanied by needs for temporary housing, temporary increase on the existing educational facilities, additional water supplies, and increased load on the City of American Falls' (City) sewage treatment facilities and other services. Completion of construction activities will also result in a period of social and economic readjustment for the community.

The City has a 400,000-gallon-per-day secondary sewage treatment plant which discharges into the Snake River downstream from the existing power plant. This facility has an adequate capacity to handle the temporary increased load due to the influx of construction workers. Flows in the river downstream from the sewage outfall may be of poorer quality during construction due to possible reduced releases from the reservoir. However, reduced flows in the river are not expected at times critical to the fishery resources downstream. As herein noted, this plant has received a §402 permit under the Amendments of 1972, 33 U.S.C. §1342.

Several alternatives to the Replacement Dam Program were considered: leave the existing dam without change; replace the existing dam without a powerhouse; repair the existing dam; enlarge the dam and the reservoir; and develop storage at other sites. These were considered as alternatives to the program which Congress approved by its Act of December 28, 1973. We have also considered power source alternatives to the proposed project: exotic, other hydroelectric, nuclear, gas turbines, combined cycle, coal-fired steam, and geothermal.

Our review of the alternative sources of power production convinces us that they are less attractive than the proposed project. The adverse environmental impacts of such alternatives would include noise, visual impacts, emissions, and increased

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heat rejection. In addition, the operation of alternative thermal power sources would deplete even further the Nation's critically short fossil-fuel supplies.

At the same time that we attempt to make the most efficient use of our non-depleting hydroelectric resources consistent with environmental protection, it is our opinion that electrical energy conservation practices are desirable and should be promoted vigorously. Though conservation cannot eliminate growth in energy demand and the need to expand electric generating capacity, such a program could effect a significant reduction in the need for new generating capacity over the next decade.

By letters dated May 17, 1974, the Secretary of the Commission requested comments pursuant to Section 4(e) of the Act and other relevant statutes from appropriate Federal, State and local agencies on the application for license. The comments received are discussed below.

The U.S. Department of the Interior (Interior) in letters dated September 5 and October 17, 1974, commented on the application and other supplemental information. Interior said that the license application provided that all falling water from the Replacement Dam would be used for hydroelectric generation purposes. Applicant's response dated September 25, 1974, acknowledged that under certain conditions it would not receive all falling water. We note that if the water quality monitoring program provided for in Article 46 herein shows substandard dissolved oxygen levels, Reclamation will be informed of the condition so that the powerplant may be bypassed. If Applicant defaults in any of its falling water payments, the powerplant will be bypassed. Further, Applicant will not receive releases when interruptions occur for inspections, maintenance, repair and emergency conditions at the Replacement Dam. In short, 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 head for power generation. The Applicant noted still further that load and machinery capacities as well as the amount and timing of water releases for irrigation, flood control and other purposes would be limiting factors to the amount of water Applicant receives for hydroelectric generation.

Interior expressed concern that the application did not adequately recognize the major adverse environmental impacts of the proposed project: (1) the destruction of the existing forebay and its associated fishery without adequate mitigation;

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(2) the degradation of water quality in the reach from American Falls Dam to Lake Walcott and its effect on the tailrace fishery, and (3) the fish mortality resulting from passage through the new turbines. These were also the chief concerns of the Idaho Wildlife Federation in its letter dated January 22, 1974.

Interior recommended that Applicant revise its exhibits to indicate (1) means to measure fish losses, (2) assignment of mitigation responsibility, and (3) the plan for mitigation. Additionally, inclusion of the standard stream gaging articles in any issued license was requested.

We concur with the specific recommendations above. By Article 40 we are requiring Applicant to continue consultation and cooperation with appropriate environmental agencies for the protection and development of the natural resources of the project area. By Article 45 Applicant shall submit for our approval a plan for a 3-year research study of fish mortality through the turbines, and at termination of the study recommend changes to alleviate the mortality problem. By Article 46 we require of Applicant consultation and cooperation with Reclamation and District in the installation, maintenance and operation of a dissolved oxygen and temperature monitoring system in the Snake River downstream from the project tailrace. Article 10 is the requested stream gaging article.

In addition, these requests have been partially satisfied through an agreement between District and Applicant dated August 21, 1973, setting forth that environmental costs related to the Replacement Dam and power plant are District's and a July 2, 1974, agreement between District and Idaho Fish and Game Commission, which establishes a mitigation plan and funding therefor. We are thus satisfied that sufficient measures have been taken to protect the resources involved.

Interior further recommended that recreation site No. 5, consisting of an existing gravel boat ramp, parking area, and access road, be included within the project boundary. Applicant's revised Exhibit R, filed July 15, 1974, which is approved in part by the terms of this license, includes this site within the project boundary. By Article 42 we are requiring Applicant to comply with Interior's recommendation that public access be provided from the new powerhouse access road, under the railroad bridge, to the west river bank.

Interior also recommended that a scenic overlook should be constructed above the Replacement Dam near the right abutment, to be operated and maintained by Reclamation. While we agree

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that the recommendation may have merit, we do not believe that such a development outside the project should be the Applicant's responsibility and are not, therefore, requiring its development.

Interior noted that the area of the project may be of some historical significance. By Article 44 we require Applicant to coordinate with appropriate agencies to develop plans and procedures to protect and enhance historical values within the project boundary, including the Old Island Powerhouse.

Under Section 7 of the Act of December 28, 1973, $400,000 is authorized for construction of specific facilities for public recreation and fish and wildlife enhancement. Interior noted that Applicant's Exhibit R said that some of these funds would be available for enhancement in the tailrace area, whereas Interior's position is that the public funds will not be available for Applicant's use. We agree with the latter interpretation of the Act of December 28, 1973, and have specifically deleted all references to such funds in the Exhibit R we approve hereinafter.

Interior also recommended that the following articles requested for the existing Project No. 2258 be included in the license for Project No. 2736:

(a) The Project shall be operated in such manner as will not conflict with the future depletion in flow of the waters of Snake River and its tributaries, or prevent or interfere with the future upstream diversion and use of such water above the backwater created by the project for the irrigation of lands and other beneficial consumptive uses in the Snake River watershed.

(b) The Licensee shall not make any claims under the authority of this license against the United States or other parties claiming through the United States for any damages resulting from any future reduction in the flow of the waters of the Snake River and its tributaries for the irrigation of lands or other beneficial purposes.

Even though the Applicant would agree to insertion of the provision contemplated by Interior in (a) above, we consider it unnecessary from a practical standpoint and do not require its inclusion. The use of falling water releases for power generation is so thoroughly under the control of Reclamation

in its releases for irrigation and other purposes of the Minidoka Project that the Applicant would have no opportunity to operate the project in a manner to conflict with future depletion or diversion of the water of the Snake River. The use of the resource is a non-depleting one and under the Act of December 28, 1973, and related contracts, the operation of the hydroelectric facility shall not impair the efficiency of the Replacement Dam Program to serve the other purposes of the Minidoka Project.

While the Applicant did not address (b) above in its comments, we note that the recommendation is similar to Section 4.7 of the unexecuted Falling Water contract. Section 4.7 provides that:

> 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 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, 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.

However, to adequately protect the Government from liability for water shortage or interruption, and in the absence of an executed agreement among the parties to that effect, Article 35 includes Interior's recommendations subject to the clarification that the license, as such, shall not be interpreted as affording greater rights to Licensee than it might otherwise have. See, Utah Power & Light Company, Project No. 2420, 41 F.P.C. 175 (1969).

Interior commented that the 138-kV transmission line from the powerplant to the switchyard traverses directly over a congested recreational area, and suggested that the line be relocated or modified to insure that it does not present a hazard. By Article 38 we require Applicant to complete, within one year, a study addressing the need for alternative alignment or clearance for the transmission line. By Article 39 we require Applicant in the design, construction and maintenance of the project works, including transmission lines, to follow the Commission's Guidelines relating to protection of certain values in the design and location of rights-of-way and transmission facilities, 18 C.F.R. §2.13 (1974).

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Applicant in Exhibits C, D, and E of its application stated that a June 15, 1923, contract (Contract) between Applicant and Reclamation, entitled a "Contract...Relative to Power Rights at American Falls, Idaho.", will continue in effect without change. Interior commented that it is anticipated that some changes would be made to said contract.

We note that Article 36 of the Contract provides that its execution shall not be construed as waiving any authority, jurisdiction or control which this Commission may have over Applicant at American Falls, nor could it, of course. Likewise, we would expect that any changes negotiated to the Contract will not be inconsistent with terms of this order or any applicable administrative or statutory requirements.

The U.S. Army, Corps of Engineers (Corps) by letter dated July 18, 1974, reported that the project is not in conflict with any existing or proposed Corps projects, and that the plans of project structures are satisfactory from the standpoint of navigation interest. According to the Corps, the project will have no adverse effect on flood control on the Snake River.

The Corps recommended that any license issued should require the Applicant to consult prior to construction with the Corps' District Engineer Walla Walla District, concerning Department of Army permit requirements. We have adopted that recommendation in Article 37.

By letter dated July 26, 1974, the U.S. Environmental Protection Agency (EPA), requested that certain conditions relating to water quality be incorporated into the license. EPA recommended that the Applicant provide and operate facilities approved by the Idaho Department of Health and Welfare (IDHW) and EPA for reoxygenation of waters released from the project to meet established water quality standards, to monitor the quality of project releases, and to notify Reclamation when water quality falls below standard so that the project will be bypassed until such time as water quality standards are met.

Applicant responded by letter dated September 25, 1974, that EPA's recommendations are provided for in the overall contractual scheme discussed heretofore. In addition, the §401 certification requested by EPA and Article 46 responds to EPA's concerns. While we recognize that the chief responsibility for reoxygenation of the water passed downstream is that of the District's under the proposed contracts, we are requiring of Applicant that it consult and coordinate with interested parties and agencies to insure adequate water quality in the Snake River.

We have provided in Article 46 a framework for consultation and cooperation to insure maintenance of water quality at the project. Particulars such as those required under the §401 permit can be addressed within this format. Good faith consultation with interested agencies may reveal that more stringent requirements are desirable. In such a case, Article 46 provides a mechanism by which the natural resources involved will be protected.

The U.S. Department of Agriculture-Forest Service reported by letters dated July 25 and August 29, 1974, that this project would not affect National Forest land or resources, nor would it conflict with any project of which the Service is aware, which should be or has been constructed by the United States.

The Department of Transportation-United States Coast Guard reported by letters dated July 23 and September 9, 1974, that it has no comments to offer nor any objection to the application.

Department of Commerce-National Marine Fisheries Service commented by letter dated June 28, 1974, that the project would have no direct effects on marine, estuarine, anadromous or inland commercial fisheries.

By letters dated May 31 and August 13, 1974, the U.S. Department of Health, Education and Welfare (HEW) said that it would be glad to comment on any draft environmental impact statement that the Commission might develop for this project. As we previously noted, Staff contributed to Reclamation's Final Environmental Statement on the American Falls Dam Replacement and Powerplant, which was made available to CEQ and the public on November 13, 1974, designated as INT-FES 74-60. */ Entities from whom comments were requested on that draft included HEW, but it did not choose to comment thereon.

The Chairman of the Pacific Northwest River Basins Commission reported by letter dated July 23, 1974, that the licensing of the project would be consistent with that Commission's approved comprehensive Columbia-North Pacific Framework Plan and that no significant historical or cultural assets are known to be involved in any environmental impacts.

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*/ Reclamation had previously developed and circulated a draft statement on the proposed legislation which became the Act of December 28, 1973.

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The Idaho Department of Water Resources stated in letters dated July 18 and August 23, 1974, that inclusion of the project plant as part of the American Falls Dam Replacement Program is consistent with the objectives of the State Water Plan, and that it is in the public interest to support construction of the proposed power plant.

In a letter dated May 31, 1974, the Idaho Parks and Recreation Department (IPRD) stated that it supported any proposal which would result in early replacement of the dam. This support was qualified pending Idaho Fish and Game Commission (IFG) accepting a plan to mitigate the loss of the forebay fishery and approval of the project's impact on water quality by IDHW. As developed herein, we believe that their concerns have been satisfied. By further letter dated September 5, 1974, IPRD expressed its satisfaction that the public interest for recreation at the project is being fulfilled.

The Advisory Council on Historic Preservation suggested in a letter dated June 21, 1974, that the Environmental Impact Statement give evidence of contact with the Idaho Historic Preservation Officer and contain a copy of his comments on the effects of the project on historical, cultural, archaeological and architectural resources. Reclamation's Final Environmental Statement adopts both of these recommendations.

We have also received comments dated June 27, 1974, from the Idaho State Preservation Officer. He suggested that the 1902 power plant building would be an excellent interpretive center for Reclamation and noted that American Falls itself has long been of historic interest as a fur trade and Oregon Trail landmark.

We have consulted the National Register of Historical Places through February 4, 1975, and find no listed sites that would be affected by the project. By Article 44, however, we require Applicant to coordinate with Reclamation and the State Historic Preservation Officer for the future protection and enhancement of any historic resources within the project boundary.

The Idaho Department of Agriculture recommended by letter dated August 13, 1974, that the Exhibit R be approved and expressed the desire to see the entire rebuilding project implemented as soon as possible. With certain deletions noted herein we are approving the Exhibit R.

In a letter dated July 23, 1974, the State of Idaho, Division of Budget, Policy Planning and Coordination offered no comment on the application.

We believe that the licensing of American Falls Project No. 2736 best meets the standard of §10(a) of the Act, 16 U.S.C. §803(a). That section requires that a project approved shall "be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes...."

Utilization of added head from the Replacement Dam through additional units will increase power capacity of the existing site from 27.5 mW to 92.4 mW. This increase reflects a fuller development of the waterpower potential of the project than previously attained. Releases from storage for irrigation purposes will also occur at times of Applicant's greatest need to serve the area's electric loads, principal of which are pumping loads of irrigators. Better use will be made of recreational attributes of the area. Adequate mitigation measures have been provided for any adverse effects of the overall project, particularly in terms of the loss of the forebay fishery, potential turbine fish mortality, and water quality concerns.

The value of increased generation and its contribution to system reliability is great. Applicant is a member of the Western Systems Coordinating Council (WSCC), in addition to having its own interconnected system. In these times of increasing need for reliable power, the addition of this potential is necessary. Of course, the energy source is of a non-depleting nature, which contributes to its efficacy in terms of conservation of natural resources.

Further, we have evaluated the cost and benefits of this project in comparison with those of alternative thermal generating sources, which would require the utilization of supplies from diminishing sources of fossil fuels. We are persuaded, as indicated previously, that no better alternative exists to the licensing of this project, and that the action we take today best serves the public interest.

Our records show that Applicant is financially qualified to undertake the development of this project. We conclude that the project structures as proposed in the application would be safe and adequate if constructed in accordance with sound engineering practice.

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Among the several contracts contemplated under the Act of December 28, 1973, is the unexecuted Falling Water Contract between the District and the Applicant, subject to the approval of the Secretary of the Interior to insure that the contract will not impair the efficiency of the dam to serve the other purposes of the Federal Minidoka project. In essence, the proposed Falling Water Contract provides for the Applicant to retire District bonds in the amount of $19,550,000 plus interest as payment for the use of "falling water" to help defray the cost of the Replacement Dam. Additional construction costs of over $19 million are proposed to be borne by spaceholders in the reservoir and, in certain instances, by the Government.

Apart from this obligation, it is also proposed that Applicant will also make supplemental falling water payments in the event that any of the spaceholders are in default of payment of their obligations. Applicant would assume under the contract the obligation to pay 33% of the operation and maintenance costs of the Replacement Dam. The proposed contract would provide for the use of standard Commission accounting procedures, and would terminate upon expiration of this license.

The proposed Falling Water contract also contemplates the possibility that the District may be required to issue Interim Notes in order to meet the construction schedule for the Replacement Dam and Reservoir. In such an event, the Applicant under the proposed contract would execute a guaranty agreement to the purchasers of such Interim Notes, upon approval by the appropriate regulatory agencies, among others. This licensing order shall not be construed as giving any approval required of the Commission under the Act, including Section 204 (16 U.S.C. §824c(a)), for such an issuance.

Pursuant to Section 10(e) of the Federal Power Act, 16 U.S.C. §803(e), we are required to fix a reasonable annual charge for the use of a Government dam, subject to readjustment by the Commission at the end of twenty years after the project is available for service and at periods of not less than ten years thereafter upon notice and opportunity for hearing. The Applicant's obligation to pay for falling water in accordance with the terms of the proposed Falling Water Contract is in essence payment for benefits received from the Government's American Falls Replacement Dam. At 1974 costs, the forty annual payments of principal and interest spread over fifty years of the license would require an estimated annual payment of $1,506,765 for falling water. In addition, the Applicant's payment of one-third of the annual operation and maintenance expenses of the Replacement Dam is estimated to average $10,000 annually and is in the nature of further annual charges. In light of the substantial nature of the proposed payments to be made by the Applicant toward the construction, maintenance and operation of the Replacement Dam we believe Applicant would in essence be paying an annual charge for the use of a Government dam within the meaning of Section 10(e) of the Act. However, we will defer our determination of reasonable annual charges until we can review, in light of any revised costs, the financial obligations assumed by the Applicant. Copies

of executed contracts and other documents relating to such financial obligations are to be promptly filed with the Commission under Article 36 of this license.

We believe that the record relative to the instant application had been fully developed and considered by this Commission. The facts have been fully developed in Reclamation's DEIS and comments thereon, as set out in the Final Environmental Impact Statement, public staff meetings, pleadings and other data on file with the Commission. Therefore, we do not believe that a trial-type hearing will contribute any new and relevant information and conclude that it is not in the public interest to hold such a hearing in this proceeding.

We conclude on the basis of the record before us that a power license should be issued to the Applicant for a term of fifty years effective on the first day of the month in which this order is issued.

Applicant filed several exhibits as part of its application. Exhibit J, General Map of the Project Area, and Exhibit K, Detail Maps of the Project Area, substantially conform to the Regulations and are approved as part of this license for Project No. 2736, subject to the provisions of Article 4, whereby Applicant will submit "as-built" Exhibits upon completion of construction or at such time as the Commission may require.

Of the 11 sheets filed as part of Exhibit L, General Design Drawings, we have included FPC No's 2736-18 through 22 as hereinafter described in this license. The remaining sheets were of an informational nature only and are not relevant to the design of the project.

Exhibit M, General Description and Specifications of Equipment is approved only as to those parts which describe part of the licensed project itself. Paragraph "1. Intake" was submitted for informational purposes only and equipment described therein is not a part of Project No. 2736 but rather of the Replacement Dam.

The revised Exhibit R filed July 15, 1974, is approved and made part of this license with the exception of portions of the text relating to expenditures of public funds authorized under the Act of December 28, 1973. Exhibit S is also approved. While we recognized previously that the primary responsibility for mitigation of any adverse environmental impacts from the Replacement Dam Program rests with District, we are requiring Applicant to consult and cooperate with appropriate agencies to help insure that the natural resources involved are protected. In this regard we note but do not include in the license the July 2, 1974, agreement between District and IFG, which Applicant filed as part of Exhibit R.

No conflicting applications are before the Commission at this time. We note that the license issued March 20, 1975, in Project No. 2258 is for the existing American Falls project.

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One of the provisions of that order requires Applicant to make application to surrender Project No. 2258 when its generation is rendered inoperable by a more comprehensive hydroelectric development at American Falls.

Finally, Applicant noted in its Exhibits C, D, and E that application would be made to the Idaho State Department of Water Administration for a change in the point of diversion of the water at American Falls, to obtain permits for any additional water used, to construct project works in the river channel, and to remove certain of the existing facilities.

The Commission finds:

(1) The American Falls Powerplant Project No. 2736 would affect lands of the United States and the United States Department of the Interior Bureau of Reclamation American Falls Replacement Dam and would be located on a navigable waterway of the United States.

(2) Applicant is a corporation organized under the laws of the State of Maine and is authorized to do business in the State of Idaho.

(3) Public notice of the filing of the application for major license was given on December 5, 1973. Notice of intervention was filed by the Idaho Public Utilities Commission pursuant to section 1.8(d)(1) of this Commission's Rules of Practice and Procedure. Interventions were granted based on petitions filed by the Governor of Idaho, Honorable Cecil D. Andrus; Idaho Fish and Game Commission; American Falls Reservoir District; and the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, Idaho.

(4) Intervenor Idaho Fish and Game Commission should be permitted to withdraw its petition to intervene.

(5) A trial-type hearing is neither warranted nor in the public interest, as the record before this Commission is sufficient for decision.

(6) No conflicting application is before the Commission.

(7) Subject to the terms and conditions hereinafter imposed, the project does not adversely affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(8) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes.

(9) The estimated cost of developing the project compared to the estimated cost of developing suitable alternative sources of power is reasonable.

(10) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 123,000 horsepower, and the amount of annual charges based on such capacity to be paid under the license for the project for the cost of administration of Part I of the Act is reasonable.

(11) The amount of annual charges to be paid under the license for recompensing the United States for the use, occupancy, and enjoyment of its lands is reasonable, as hereinafter fixed and specified.

(12) It is appropriate in the administration of the Federal Power Act to defer the question of reasonable annual charges to be assessed for the use of a Government dam.

(13) The plans of the structures affecting navigation have been approved by the Corps of Engineers.

(14) The term of the license hereinafter authorized is reasonable.

(15) The Exhibits designated and described in paragraph (B) below conform to the Commission's Rules and Regulations and should be approved as part of the license for the project.

(16) The Applicant has demonstrated satisfactory evidence that it has the necessary financial capabilities to undertake the development and operation of the project.

(17) Federal development of this project has been precluded by the Act of December 28, 1973.

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The Commission orders:

(A) This license is hereby issued to Idaho Power Company (hereinafter Licensee) under the Federal Power Act for a fifty year period commencing the first day of the month in which this order is issued, for the construction, operation and maintenance of the American Falls Project No. 2736, located on the Snake River, in Power County, Idaho, and which occupies lands of the United States, will utilize water from and affect the American Falls Replacement Dam of the United States Department of the Interior Bureau of Reclamation, and further would affect navigable waters of the United States, subject to the terms and conditions of the Federal Power Act, which is incorporated herein by reference as part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The American Falls Project No. 2736, consists of:

(i) all lands constituting the project area and enclosed by the project boundary, the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the Licensee or the United States; such project area and project boundary being shown and described by certain exhibits which form part of the application for license which are designated and described as follows:

Exhibit	FPC No.	Showing
Exhibit J, Sheet 1 of 1	2736-32	General Map
Exhibit K, Sheet 1 of 2	2736-27	Detail Map
Exhibit K, Sheet 2 of 2	2736-28	Detail Map

(ii) project works consisting of: (1) three 18-ft. steel-lined penstocks extending approximately 240 ft. downstream from a connection with similar penstocks and intake works to be constructed as part of the Government's American Falls Replacement Dam to the centerline of project turbines; (2) a reinforced concrete powerhouse containing three adjustable-blade turbines each rated 42,000 hp at 88-ft. net head connected to three vertical-shaft, semi-outdoor type generators each rated 34.2 mVA (30.8 mW at 0.9 p.f.), a 175-ton gantry crane, and other related electrical and mechanical equipment; (3) a switchyard upstream from the powerhouse containing one three-phase transformer rated approximately 125 mVA, 13.8/138

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kV, with circuit breakers and disconnect switches; (4) a 138-kV steel-pole transmission line extending approximately 2,100 ft. along the right bank and across the Snake River to the 138-kV switchyard of the existing American Falls Project No. 2258 of the Idaho Power Company; (5) a tailrace; (6) recreation facilities consisting of a public parking area, three small landscaped parks with picnic tables, a potable water supply and sanitary facilities, a public access area on the West bank of the Snake River to accommodate bank fishing, and boat launching facilities; and (7) appurtenant facilities: -- the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also form part of the application for license and which are designated and described as follows:

Exhibit L	FPC No	Showing	Licensee Drawing No.'s
Sheet 1 of 10	2736-18	Project Layout-Plan & Section	PH-002
Sheet 2 of 10	2736-19	Powerhouse General Arrangement-Top Deck & Generator Floor	PH-017
Sheet 3 of 10	2736-20	Powerhouse General Arrangement-Turbine Floor & Inspection Gallery	PH-018
Sheet 4 of 10	2736-21	Powerhouse General Arrangement-Transverse Sections	PH-015
Sheet 5 of 10	2736-22	Powerhouse General Arrangement-Longitudial Section	PH-016

Exhibit M: Consisting of three typewritten pages, filed February 6, 1974, entitled "General Description and Specification of Equipment", except for paragraph "1" on page 1.

Exhibit R (revised): Filed July 15, 1974 and consisting of:

(1) seven typewritten pages of text, except for the second paragraph on page 1 and the third full paragraph on page 5 thereof, and

(2) one map Exhibit R, page 1 of 1 (revised) (FPC No. 2736-29) entitled "Location Map - Recreational Facilities," insofar as it describes existing and proposed recreation sites.

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Exhibit S (revised): Filed March 18, 1974, and consisting of five typewritten pages of text.

(iii) all of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, and such other property as may be used or 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 part of the project is approved or acquiesced in by the Commission; together with all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the following terms and conditions set forth herein as articles:

Article 1. The entire project, as described in this order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in uses of project land and waters or in the project works or

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divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of 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 4. Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised exhibits insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the exhibits approved by the Commission, 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 exhibits. Such revised exhibits shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 5. The construction, operation, and maintenance of the project and any work incidental to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, 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 cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project and for any subsequent alterations to the project. Construction of the project works or any feature or alteration thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for

Letter sent by Paul Jacquet 7-21-76

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a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicablility as the Commission may from time to time prescribe for the protection of life, health, or property.

Article 6. The Licensee within five years from date of issuance of the license shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance and operation of the project. The Licensee, its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. 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; and mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 7. In the event the project is taken over by the United States upon the termination of the license, as provided in Section 14 of the Act, or is transferred to a new license or to a non-power licensee under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of occupancy and use in any of 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

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assume responsibility for payment and discharge, of all liens or incumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, That the provisions of this article are not intended 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 to or right of occupancy and use in any of such project property than was necessary to acquire for its own purposes as Licensee.

Article 8. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Act and the Commission's Rules and Regulations thereunder.

Article 9. After the first 20 years of operation of the project under the license, six percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first 20 years of operation under the license, in excess of six percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year: Provided, that, if and to the extent that there is a deficiency of project earnings below six percent per annum for any fiscal year or years after the first 20 years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

Article 10. For the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for

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the adequate rating of such 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, shall at all times be satisfactory to the Commission and 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 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, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 11. The Licensee shall install additional capacity or make other changes in the project as directed by the Commission to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 12 The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 13. 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 improvements, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or

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other headwater improvements of the United States the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act.

Article 14. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 15. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region, for water supply, or for the purpose of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation, at least full reimbursement for any damages or expenses which the joint use causes him to incur, for use of its reservoir or other project properties or parts thereof for such purposes, any such compensation to be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary

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water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be concurrently submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 16. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices 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 constructed prior to its transmission lines and 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 or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

Article 17. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such reasonable facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 18. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article.

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This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 19. The Licensee shall construct, maintain and operate, or shall arrange for the construction, maintenance and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing.

Article 20. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: Provided, That the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 21. The Licensee shall be responsible for and shall take reasonable measures to prevent soil erosion on lands adjacent to the stream(s) and to prevent stream siltation or other forms of water or air pollution resulting from construction, operation or maintenance of the project. The Commission upon request, or upon its own motion, may order the Licensee to take such measures as the Commission may find to be necessary for these purposes, after notice and opportunity for hearing.

Article 22. Licensee shall dispose of all temporary structures, unused timber, brush, refuse, or other unneeded material resulting from the clearing of lands or from the maintenance or alteration of the project works. Disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local laws and regulations.

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Article 23. Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited in such a manner as to reasonably preserve the project environmental values and so as not to interfere with traffic, both land and water. Dredging and filling in a navigable water of the United States will also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 24. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the 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 dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

Article 25. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure constituting a part of the project works 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 the Army.

Article 26. The Licensee shall furnish free of cost to the United States power for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto whether said facilities are constructed by the Licensee or by the United States.

Article 27. The Licensee shall for the protection of navigation, construct, maintain and operate at its own expense such lights and other signals on fixed structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 28. 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 under the license. Arrangements to meet such

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liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 29. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across those project lands which are lands of the United States such conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other means of transportation and communication not inconsistent with the enjoyment of said lands by the Licensee for the purposes of the license. This license shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 30. In the construction and maintenance of the project, the location and standards of roads and trails on lands of the United States and other uses of lands of the United States, including the location and condition of quarries, borrow pits, and spoil disposal areas, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 31. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction.

Article 32. The Licensee shall cooperate with the United States in the disposal by the United States of mineral and vegetative materials, under the Act of July 31, 1947, 61 Stat. 681, as amended (30 U.S.C. §601, et seq.) from lands of the United States occupied by the project or any part thereof: Provided, That such disposal has been authorized by the Commission and that it does not unreasonably interfere with the occupancy of such lands by the

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Licensee for the purposes of the license: Provided further, That, in the event of disagreement, any question of unreasonable interference shall be determined by the Commission after notice and opportunity for hearing.

Article 33. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and take any such other action necessary to restore the project stream(s), lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or provide for the continued operation and maintenance of non-power facilities and fulfill such other obligations under the license as the Commission may prescribe. The Commission, in its discretion, may also terminate the license.

Article 34. The right of the Licensee and of its transferees and successors to use or occupy waters, over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 35. This license shall not be construed as affecting in any way any claim the licensee may have concerning its water rights acquired pursuant to State law. Those rights, not this license, shall govern any claim the licensee may advance against the United States or other parties claiming through the United States for any damages resulting from any future depletion in the flow of the waters of the Snake River and its tributaries for the irrigation of lands or other beneficial consumptive uses.

Article 36. Licensee shall promptly file for Commission information copies of all executed contracts

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and other documents relating to any financial obligations assumed by it with respect to the American Falls Replacement Dam and Reservoir.

Article 37. During the planning and design period prior to construction of the project, the Licensee shall consult with the District Engineer, Corps of Engineers, Walla Walla District, concerning the Department of the Army permit requirements.

Article 38. Licensee shall within 1 year from the effective date of this license: (1) complete a study, in consultation with appropriate Federal, State and local agencies, to determine the need, if any, of an alternative alignment and/or clearance for the 138-kV transmission line extending from the powerhouse to the American Falls switchyard necessary for the safety and protection of persons using the reservoir for navigational and recreational purposes, and (2) file a revised Exhibit F and submit for Commission approval revised Exhibits J, K, M, and L, reflecting any change in alignment or clearance of the 138-kV transmission line, in conformance with the Commission's rules and regulations.

Article 39. Licensee shall in the design, construction and maintenance of the project works, including transmission lines, follow the Commission's "Guidelines for the Protection of Natural, Historic, Scenic and Recreational values in the Design and Location of Rights-of-Way and Transmission Facilities" of Commission Order No. 414 and other recognized engineering and landscaping practices as may be needed to protect and preserve the environmental values of the project.

Article 40. The Licensee shall, during the development and operation of the project, continue to consult and cooperate with the U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Idaho Department of Fish and Game, Idaho Department of Water Resources, and other appropriate environmental agencies for the protection and development of the natural resources of the project area.

Article 41. The Licensee shall, to the satisfaction of the Commission's authorized representative, install and operate such signs, lights, sirens or other devices

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below the powerhouse to warn the public of fluctuations in flow from the project, as may be reasonably needed to protect the public in its recreational use of project lands and waters.

Article 42. The Licensee shall, in cooperation with the U.S. Department of the Interior, State and local agencies, construct, maintain and operate, or arrange for the construction, maintenance and operation thereof, a parking area along the access road to the powerhouse; a foot trail to provide public access, extending from this road, under the railroad bridge, to the west riverbank tailrace area; and a boat dock (Development 6) adjacent to the existing park (Development 1, as shown on the Exhibit R drawing FPC No. 2763-29).

Article 43. Licensee shall consult and cooperate with the Idaho Department of Health and Welfare and comply with State and local regulations in planning and providing for the collection, storage, and disposal of solid wastes generated through public access and use of project lands and waters, and, within one year after issuance of this license, shall file with the Commission a solid waste management plan which has been approved by the Idaho Department of Health and Welfare. This plan shall provide: (a) the location of solid waste receptacles to be provided at public areas, picnicking areas, and boat access areas; (b) schedules of collection for the above receptacles; (c) provisions for including in the subject plan any public use areas as they may be developed; and (d) disposal sites and methods of disposal.

Article 44. The Licensee shall cooperate with the U.S. Department of the Interior's Bureau of Reclamation and the Office of the Idaho State Historic Preservation Officer: (1) in developing plans or procedures for the protection, during and after project construction, of any historic resources identified as being within the project boundaries including the Old Island Powerhouse, and (2) in developing and executing plans for the improvement of such structures in the interest of recreation, education, and historic preservation, including the provision of public access to such resources.

Article 45. The Licensee, within 1 year of the date of issuance of the license and following consultation and cooperation with the U.S. Department of the Interior's Bureau of Reclamation and Fish and Wildlife Service, and

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the Idaho Department of Fish and Game, shall prepare and submit for Commission approval plans for a comprehensive, 3-year research study devised to determine the mortality rate of fish passed downstream via the turbines. The Licensee shall file annual progress reports with the Commission and at the termination of the study, shall file with the Commission a final report to include recommendations for any changes in project structures or operations as indicated desirable from the study, or the need for any continuation of the study.

Article 46. The Licensee, following consultation with appropriate Federal and State water quality agencies, shall cooperate with the Bureau of Reclamation and the American Falls Reservoir District in the installation, maintenance, and the continuous operation of a dissolved oxygen and temperature monitoring system in the Snake River immediately downstream from the project tailrace. Licensee will insure that procedures exist whereby water releases from the Replacement Dam will bypass the project when the D.O. levels as measured by the system fail to meet the approved State standards. The Licensee shall maintain records of the data gathered and shall file with the State Health and Welfare and Fish and Game Departments and the Commission annual summaries, or summaries for other intervals when requested, reporting observed daily minimum, maximum, and average dissolved oxygen concentrations and temperatures, and any actions taken when the D.O. levels were below the approved State Standard.

Article 47. The Licensee shall commence construction of the project within two years from the effective date of the license and shall thereafter in good faith and with due diligence prosecute such construction, and shall complete construction of such project works within four years from the effective date of the license.

Article 48. The Licensee shall pay the following annual charges, effective as of the first day of the month in which this license is issued:

(i) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 123,000 horsepower; and

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(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 10.31 acres of its lands, $24.74, or such amount as may be determined from time to time pursuant to the Commission's Regulations; and

(iii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of the American Falls Replacement Dam, an amount to be hereafter determined by the Commission. Upon receipt from the Licensee of the executed contracts, as provided for in Article 36 herein, the Commission will determine the amount of reasonable annual charges to be paid by Licensee for the purpose of recompensing the United States for the use, occupancy, and enjoyment of the American Falls Replacement Dam.

Article 49. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

(D) The Exhibits designated and described in Paragraph (B) above are hereby approved and made a part of the license to the extent heretofore noted.

(E) Intervenor Idaho Fish and Game Commission is hereby permitted to withdraw its petition to intervene.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

By the Commission.

(S E A L)

Kenneth F. Plumb,
Secretary.

IN TESTIMONY of its acknowledgment of acceptance of all of the provisions, terms and conditions of this license, Idaho Power Company, this ____ day of _____, 1975, has caused its corporate name to be signed hereto by _____, its _____ President, and its Corporate Seal to be affixed hereto and attested by _____, its _____ Secretary, pursuant to a resolution of its Board of Directors duly adopted on the ____ day of _____, 1975, a certified copy of the record which is attached hereto.

Idaho Power Company

By _____
President

Attest:

_____
Secretary

(Executed in Quadruplicate)

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Exhibit NN

FALLING WATER CONTRACT - Draft of July 5, 1973

11.2 If the Federal Power Commission license is renewed or continued, this Agreement shall thereupon be continued in effect during such period of renewal or continuation; provided, however, that the parties may mutually consent to such annual payments as shall be agreed to by the parties at that time, which payments shall be based on actual cost incurred by the parties.

FALLING WATER CONTRACT - Draft of January 11, 1974

11.2 If the Federal Power Commission license is renewed or continued, this Agreement shall thereupon be continued in effect during such period of renewal or continuation; provided, however, that the parties may mutually consent to such annual payments as shall be agreed to by the parties at that time, which payments shall be based on actual cost incurred by the parties.

FALLING WATER CONTRACT - Draft of January 25, 1974

12.2 If the Federal Power Commission license is renewed or continued, this agreement shall thereupon be continued in effect during such period of renewal or continuation; provided, however, that the parties may mutually consent to such annual payments as shall be agreed to by the parties at that time, which payments shall be based on actual cost incurred by the parties.

FALLING WATER CONTRACT - Draft of March 8, 1974

13.2 If the Federal Power Commission license of the Company is renewed or continued, this Agreement shall thereupon be continued in effect during such period of renewal or continuation; provided, however, that the parties may mutually consent to such annual payments as shall be agreed to by the parties at that time, which payments shall be based on actual cost incurred by the parties.

FALLING WATER CONTRACT - Draft of March 25, 1974

14.2 If, after the expiration of the initial term of the License of the Company for the operation and ownership of the Power Plant, such License is renewed or continued, this Contract shall thereupon be

continued in effect during such period of renewal or continuation; provided, however, that the parties may mutually consent to such annual payments to be made by Company to District as shall be agreed to by the parties at that time, which payments shall be based on actual cost incurred by the parties.

FALLING WATER CONTRACT - Draft of May 3, 1974

Section 14.2. Renewal Term. If, after the expiration of the initial term of the License of the Company for the operation and ownership of the Power Plant, such License is renewed or continued this Contract shall thereupon be continued in effect during such period of renewal or continuation; provided, however, that the parties may mutually consent to such annual payments to be made by Company to District as shall be agreed to by the parties at that time, which payments shall be based on actual cost incurred by the parties.

FALLING WATER CONTRACT - Draft of May 24, 1974

Section 14.2. Renewal Term. If after the expiration of the initial term of the License of the Company for the operation and ownership of the Power Plant, such License is renewed or continued this Contract shall thereupon be continued in effect during such period of renewal or continuation; provided, however, that the parties may mutually consent to such annual payments to be made by Company to Constructing Agency as shall be agreed to by the parties at that time, which payments shall be based on actual cost incurred by the parties.

FALLING WATER CONTRACT - Draft of June 13, 1974

Section 14.2. Renewal Term. If, after the expiration of the initial term of the License of the Company for the operation and ownership of the Powerplant, such License is renewed or continued this Contract shall thereupon be continued in effect during such period of renewal or continuation; provided, however, that the parties may mutually consent to such annual payments to be made by Company to the Constructing Agency on behalf of the Spaceholders as shall be agreed to by the parties at that time, which payments shall be based on actual cost incurred by the parties.

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FALLING WATER CONTRACT - Draft of July 5, 1974

Section 14.2. Renewal Term. If, after the expiration of the initial term of the License of the Company for the operation and ownership of the Powerplant, such License is renewed or continued this Contract shall thereupon be continued in effect during such period of renewal or continuation; provided, however, that the parties may mutually consent to such annual payments to be made by Company to the Constructing Agency on behalf of the Spaceholders as shall be agreed to by the parties at that time, which payments shall be based on actual cost incurred by the parties.

FALLING WATER CONTRACT - Draft of June 23, 1975

Section 14.2. Renewal Term. If, after the expiration of the initial term of the License of the Idaho Power Company for the operation and ownership of the Powerplant, such License is renewed or continued this Falling Water Contract shall thereupon be continued in effect during such period of renewal or continuation; provided, however, that the parties 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, which payments shall be based on actual cost incurred.

FALLING WATER CONTRACT - Draft of August 1, 1975

Section 14.2. Renewal Term. If after the expiration of the Original Term of the License of the Idaho Power Company for the operation and ownership 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.

FALLING WATER CONTRACT - Draft of September 1975

Section 14.2. Renewal Term. If, after the 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.

FALLING WATER CONTRACT - Executed copy dated as of March 31, 1976

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.

Exhibit OO

M E M O R A N D U M

TO: American Falls Dam and Reservoir Spaceholders

FROM: Contract Negotiating Committee

DATE: September 5, 1975

SUBJECT: Proposed Contracts Regarding the Replacement of the American Falls Dam

The Contract Negotiating Committee appointed by the Committee of Eight has completed its negotiations with Idaho Power Company and the Bureau of Reclamation and has been authorized by the Committee of Eight to present to each Spaceholder in American Falls Reservoir the proposed contracts. It is our intent to set out in this letter an adequate review of these proposed contracts and events that have transpired prior to this date to enable each individual Spaceholder to fully understand the American Falls Replacement Dam Program as it presently is contemplated. Through the extended cooperation of the Spaceholders, Idaho Power Company, Bureau of Reclamation and other state and federal agencies we have been able to negotiate the responsibilities of all the parties involved in the replacement of the American Falls Dam, the terms of which we believe are equitable to all.

Since the Bureau of Reclamation first announced a restriction on the storage of water by the American Falls Dam in the Fall of 1972, and the decision to proceed to replace the dam in March of 1973 pursuant to the proposal submitted by Idaho Power Company, much has been accomplished. A partial list is as follows:

1. A congressional bill authorizing the Spaceholders to proceed with the replacement of the American Falls Dam became law on December 28, 1973.

2. An agreement was executed on behalf of the Spaceholders with the State of Idaho Division of Highways to work out the details of the highway river crossing conditioned upon proceeding with the program.

3. An agreement was executed with the Idaho Fish and Game Department to cover fish and wild life mitigation necessary by reason of the proposed project conditioned upon proceeding with the program.

4. An agreement to be executed with the State of Idaho will provide for the highway department's continuing maintenance

of the two-lane roadway to be constructed on the dam.

5. The engineering plans, designs, and specifications for the replacement of American Falls Dam have been prepared by Bechtel, Inc., an engineering firm employed by the Spaceholders, and said plans, designs and specifications have been tentatively approved by the Bureau of Reclamation. The construction schedules and final bid documents cannot be finalized and approved until a starting date has been adopted. A starting date cannot be adopted until the program is approved by the Spaceholders.

6. A environmental impact statement prepared by the Bureau of Reclamation for this project has received final approval and has been filed with the Council on Environmental Quality, as required by law.

7. A Federal Power Commission license has been granted to Idaho Power Company for the construction and operation of a new power plant at American Falls. This license requires Idaho Power Company to commence construction of its power plant within two years from March 31, 1975 and to complete construction within four years from said date.

8. A new dissolved oxygen water quality standard for a portion of the Snake River below American Falls Dam has been approved by the State Department of Health and Welfare and the United States Environmental Protection Agency, requiring a minimum standard of six parts per million.

9. An application has been made to the Internal Revenue Service requesting a revenue ruling that the bonds to be issued by the American Falls Reservoir District to finance the construction of American Falls Dam have a tax exempt status. As of this date, the Internal Revenue Service has failed to make a ruling on this request. Consequently, our United States Senators introduced Senate Bill 1152 as an amendment to the Act of December 28, 1973, which will provide a tax exempt status on the bonds issued by the District. Senate Bill 1152 has passed the United States Senate and is presently being considered by the House of Representatives. It has, to this time, been the position of the Committee of Eight that obtaining a tax exempt status for the bonds is a condition precedent to proceeding with the issuance of bonds for the construction of American Falls Dam.

10. The Negotiating Committee under the direction of the Committee of Eight has proceeded with the drafting of the proposed contracts to permit their submission to each spaceholder organization for their consideration and approval at the earliest date.

Simultaneously with the delivery of the contracts to you, the Bureau of Reclamation will submit the contracts to the Commissioner of Reclamation for review. It should be noted that

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changes could occur as a result of further review. The contracts will not be submitted to the Secretary of the Interior for final review and approval until resolutions approving the form of contracts have been received from substantially all of the Spaceholders. Once the form of the contracts has been approved as above contemplated and the tax exempt status of the bonds obtained, elections on the execution of the contracts can be called and held by each spaceholder entity.

We have forwarded copies of the four proposed contracts to each Spaceholder. A brief summary as to the nature and terms of each of these contracts to be entered into pursuant to the authority contained in the Congressional Act of December, 1973, follows. We have attempted in these summaries to discuss each of the major terms and conditions of each contract.

I. GOVERNMENT CONTRACT

This contract, to be entered into between the United States and the American Falls Reservoir District (as the constructing agency acting on behalf of all American Falls Spaceholders), authorizes the American Falls Reservoir District to finance and provide for the construction of the American Falls Replacement Dam Program. The key provisions of the contract include:

a. A list of the facilities (the replacement dam, related facilities and water quality facilities, etc.) to be provided in the American Falls Replacement Dam Program by the American Falls Reservoir District.

b. That the American Falls Reservoir District shall be responsible for the preparation of the plans, designs, specifications and construction of the American Falls Replacement Dam Program.

c. That the United States must approve the plans, designs and specifications before construction.

d. That the ownership of the dam and related facilities shall vest in the United States upon completion of the American Falls Replacement Dam Program.

e. That the operation and maintenance of the dam and related facilities shall be under the control of the Bureau of Reclamation.

f. That the dam shall continue to be operated primarily for irrigation purposes.

g. That the delivery of water from the reservoir to Spaceholders is contingent upon the execution of a spaceholder

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contract and the fulfillment of their obligations as they become due. In essence, this provision provides that in the event a Spaceholder does not hold an election and does not sign a contract, the water accruing to that Spaceholder's space shall not be delivered to that Spaceholder and its rights shall be terminated. If a Spaceholder calls an election prior to the execution of the Government Contract and loses the same, but proceeds to rent its own water for that year in which the first payments are due, the water accruing to the space formerly contracted for by that Spaceholder shall not be terminated until the following year. If a spaceholder has executed a contract, its failure to make the payments thereunder as they become due shall cause immediate termination of its space. Any Spaceholder has one year after termination of its space to redeem its space upon payment of the charges, plus penalties, that would have been due if a contract had been executed.

h. In the event a spaceholder's contract is terminated or the use of space is terminated, the United States shall arrange for the use of such space on a temporary or permanent basis: first for irrigation water use by other spaceholders not in default, second for irrigation water use by non-spaceholders, and third for use by the United States. In the event the United States shall not make this space available as above provided, such space will be made available to the Idaho Power Company for power generation. It must be noted that these provisions are necessary in view of the provisions under the Falling Water Contract which provide that Idaho Power Company shall automatically make all payments of a defaulting spaceholder or non-participating spaceholder when said payments become due. Of course, if the water accruing to that space is subsequently made available for purposes other than power generation, Idaho Power Company will be reimbursed for the payments made under its guarantee.

II. SPACEHOLDER CONTRACT

This is a proposed contract between the United States, the American Falls Reservoir District, and each Spaceholder. Its purpose is to provide for the repayment by the Spaceholder of its proportionate share of the total costs incurred in the American Falls Replacement Dam Program. These contracts will be essentially identical except for the name of the Spaceholder involved and shall be supplemental to the existing contract between the United States and the Spaceholder relating to American Falls Dam. These spaceholder contracts would modify the existing contracts only to the extent necessary to make the provisions of the contract consistent with the provisions of the Act of December 28, 1973 as it relates to the replacement of the American Falls Dam. Each spaceholder contract sets out the relationship between the United States, the American Falls Reservoir District, and the Spaceholder, and includes:

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a. A provision by which any Spaceholder may prepay his proportionate costs of the reconstruction program.

b. If not prepaid, a provision requiring the Spaceholder to repay its share of the bonds to be issued by the American Falls Reservoir District for the replacement of American Falls Dam and which are not scheduled for payment by the Idaho Power Company under its Falling Water Contract, over a contemplated 40 year period.

c. Provisions for the payment to the United States for the operation and maintenance of the dam and reservoir, including payments, as necessary, for erosion control along the reservoir shoreline.

d. A provision for the payment to the American Falls Reservoir District of a portion of the annual costs of operating and maintaining the water quality facilities.

e. A provision that all bond payments and operation and maintenance payments shall be made on or before April 1 of each year.

f. A provision for the repayment to the United States of costs incurred in the construction of penstocks in the existing American Falls Dam, payment of which was deferred pending the construction of a federal power plant. These costs have remained on the books of the United States as an unpaid obligation of this project, as a federal power plant has never been constructed.

g. A provision which would allow the refunding of all bonds at any time after ten years from their issuance in the event a savings could be obtained by reason of decreased interest rates.

h. Recognizes the right of each Spaceholder to continue to obtain and use the water which accrues to its space so long as the obligations under its contract are met.

i. A provision for eventual recourse by the bondholders against each Spaceholder and Idaho Power Company if the Spaceholder defaults on its repayment obligations and at such time the Idaho Power Company has defaulted on its obligations. If a Spaceholder defaults in its payments and Idaho Power Company is not in default, the only remedy is to withhold the Spaceholder's water and terminate its space.

j. A provision for the return of monies advanced by Spaceholders, together with interest at 6½% per annum, from the bond proceeds.

k. A provision for the appointment of a representative from the Spaceholders to meet with representatives of Idaho Power

Company and the American Falls Reservoir District to determine cost allocations and other decisions required during construction and thereafter.

1. The standard articles included in all Bureau of Reclamation contracts, beginning with Article 33.

III. WATER QUALITY FACILITIES AGREEMENT

Attached as an exhibit to the Spaceholder contract above described is an agreement delineating the responsibilities of the American Falls Reservoir District, on behalf of the Spaceholders, and the Idaho Power Company concerning the construction, operation, and maintenance of the water quality facilities which will be installed in connection with the American Falls Replacement Dam Program. These facilities are required to be installed as part of the replacement program for the reason that a change in the manner of the release of the water from the reservoir may cause a degradation of the dissolved oxygen content of the water downstream. Such a degradation of the quality of the water may be in violation of the water quality standards of the State of Idaho and could be detrimental to the fishery resources downstream from the replacement dam. This contract provides:

a. That Idaho Power Company shall pay all of the construction costs for the water quality facilities and shall operate and maintain these facilities.

b. That Idaho Power Company and the Spaceholders will share equally in the actual annual operation and maintenance costs of the water quality facilities up to $125,000.

c. That Idaho Power Company shall pay all of the actual annual operation and maintenance costs of the water quality facilities exceeding $125,000.

d. The Spaceholders' operation and maintenance obligation shall terminate upon the expiration of 40 years and shall thereafter be the obligation of Idaho Power Company.

e. That the Spaceholders may agree to share with Idaho Power Company, under certain circumstances, additional construction costs in the event such construction would reduce the operation and maintenance obligations of the Spaceholders and said costs would result in an ultimate saving to the Spaceholders.

f. That the water quality facilities will be owned by the United States as part of the project and the Secretary of Interior is authorized to bypass water around the Idaho Power Company power plant if the water quality standard is not being met by the operation of the water quality facilities.

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It should be noted that under the terms of this Agreement, the spaceholders will never be obligated to pay annually more than $62,500 per year for any costs relating to water quality facilities, which amount is equal to 3.7 cents per acre foot of storage space. For instance, in the event a Spaceholder should have 100,000 acre feet of storage space in American Falls Dam, it would cost that Spaceholder a maximum of $3,700 annually for operation and maintenance of the water quality facilities.

IV. FALLING WATER CONTRACT

This contract is between the American Falls Reservoir District and the Idaho Power Company and must be approved by the Secretary of the Interior. This contract provides that Idaho Power Company, if it makes the payments and complies with the covenants contained in said agreement, may use for the generation of power the water released from the American Falls Dam and Reservoir. In consideration of the use of this water for power generation, Idaho Power Company has agreed under the provisions of the contract:

a. To make annual payments which will retire the sum of $19,550,000, the costs of the Water Quality Facilities and approximately 1/2 of all costs over $38,000,000, in bonds, plus interest, over the 40 year repayment period.

b. To make the payments of any Spaceholder who is in default. (This provision is essential to improve the marketability of the bonds and to obtain the most favorable interest rate thereon). If Idaho Power Company is not reimbursed for these payments it is entitled to the use of that water for that year.

c. In the event the cost of the replacement dam project exceeds the amount of authorized bonds, to pay in full the first $1,000,000 of the cost over-run. The Spaceholders will be responsible for the second $1,000,000 of cost over-run, if any, and any over-runs in excess of $2,000,000 will be shared approximately equally as are all costs over $38,000,000.

d. That the operation of the power plant is subordinate to the operation of the project for irrigation purposes.

e. For the coordination of the construction by Idaho Power Company of its power plant with the construction by the American Falls Reservoir District of the replacement dam.

f. To pay thirty three percent of the direct operation and maintenance costs of the American Falls Dam in additon to the operation and maintenance payments which it is to make as a Spaceholder.

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SUMMARY

The Negotiating Committee has assured itself that the proposed documents are in adequate legal form and would obligate the United States through the Bureau of Reclamation, the American Falls Reservoir District, the Idaho Power Company and each Spaceholder to perform the covenants and agreements contained in the respective contracts so that the dam and related facilities can be reconstructed. We sincerely urge that each Spaceholder or the members of the Board of Directors or other governing body of a Spaceholder carefully review the proposed contracts. Upon request, discussion sessions can be scheduled for the purpose of reviewing the terms and conditions of the contracts, to provide illustrations as to cost allocations, and to answer any questions that may arise therefrom with each Spaceholder or its governing body. Within the next 30 to 45 days you will be requested to submit a resolution approving the form of the spaceholder contract. Thereafter the contracts will be transmitted from the Commissioner of Reclamation to the Secretary of Interior for review and approval.

When the contracts have been approved by the Secretary of the Interior and the tax question on the bonds has been resolved or the resolution of that issue appears to be forthcoming, each spaceholder organization will be asked to adopt an election resolution calling for an election on the question of the execution of a spaceholder contract and the assumption of the assessments provided therein to repay for that Spaceholder's proportionate share of the American Falls Replacement Dam Program and the operation and maintenance obligations resulting therefrom. In the event successful elections are held this year or the first part of next year, we anticipate that a construction contract will be let in May of 1976 and construction on the American Falls Replacement Dam commenced as early as June of 1976. It is hoped that all Spaceholders will continue in their concerted effort and cooperation to obtain the early replacement of the American Falls Dam. It is only through the mutual cooperation of the Spaceholders of American Falls Dam and all other water users of the State of Idaho that we can expect to realize the completion of a project of this magnitude.

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Exhibit PP

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
THE IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301

TELEPHONE
(208) 733-3722

OUR FILE NUMBER

R. P. PARRY
T. M. ROBERTSON
JOHN H. DALY (1913-1966)
BERT LARSON
C. G. MCINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. FAINE

October 10, 1975

OFFICE OF THE SOLICITOR
FIELD SOLICITOR
BOISE, IDAHO

OCT 14 1975

Mr. Bill Burpee
Office of the Solicitor
U. S. Department of Interior
Boise, Idaho 83724

Dear Bill:

On September 16th, 17th, and 18th, Phil Holm, Cecil Hobdey, Roger Ling, and myself met in Twin Falls to re-work election resolutions. We also had time to discuss the three unique Spaceholder Contracts involving the American Falls Reservoir District, the Michaud Division, and the Idaho Power Company, We have incorporated changes to the basic Spaceholder Contract and herewith enclose copies of those three specific contracts. We did not make major changes nor did we delete some recitations which may appear unnecessary or redundant because it was more convenient from a mechanical standpoint.

If you have questions on these documents or wish to meet with us on them, perhaps we could schedule a session at your convenience.

Sincerely,

JOHN A. ROSHOLT

JAR:bg

Enclosures

cc: Larry Vinsonhaler
Phil Holm
Bob Hogg

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Exhibit QQ

United States Department of the Interior

BUREAU OF RECLAMATION
WASHINGTON, D.C. 20240

IN REPLY
REFER TO: 440
510.

FEB 25 1976

Memorandum

To: Secretary of the Interior

From: Commissioner of Reclamation

Subject: Proposed Contracts for the Replacement of American Falls Dam--Minidoka Project, Idaho-Wyoming

1. Introduction: The Act of December 28, 1973 (87 Stat. 904), authorized the American Falls Reservoir District to undertake the construction and financing of a dam to replace the existing American Falls Dam on the Snake River, Idaho, on behalf of all of the water users who have previously contracted for storage in the American Falls Reservoir. The work to be accomplished by the district consists of the construction of a replacement dam with a two-lane highway on the crest and a bridge immediately downstream, facilities for recreation and fish and wildlife mitigation, water quality facilities, and other related facilities, hereinafter referred to collectively as the American Falls Replacement Dam Program. Upon completion, the United States will take title to the dam as a feature of the Minidoka Project.

Before construction may be initiated, it is necessary, as provided by the Act of December 28, 1973, that the following documents be executed or approved in behalf of the United States:

a. A contract to be executed between the United States and the American Falls Reservoir District (Government contract).

b. A contract to be approved by the United States between the American Falls Reservoir District and the Idaho Power Company (Falling Water contract).

c. Contracts to be executed among the United States, the American Falls Reservoir District, and the 34 individual districts, companies, and individuals which have contracts with the United States

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for storage of water in the existing dam and reservoir (Spaceholder contracts). A contract will also be required for space which the United States holds for the Michaud Division of the Fort Hall Indian Reservation.

d. An agreement, to be approved by the United States, between the American Falls Reservoir District and the Idaho Power Company concerning the construction, operation, and maintenance of the water quality facilities (Water Quality Facilities agreement).

2. Contracting Entities:

a. American Falls Reservoir District: The formation of the American Falls Reservoir District was approved by the shareholders of the Aberdeen-Springfield, Martin, North Side, Twin Falls, and Woodville Canal Companies on January 16, 1923. The district was organized for the purpose of selling bonds to finance the component canal companies' shares of the cost of constructing the original dam. The district is essentially an administrative and not an operating organization. It has 460,170 acre-feet of space in American Falls Reservoir under contract on behalf of the five canal companies. More than 400,000 of the 900,000 irrigated acres receiving water from American Falls Reservoir lie within the boundaries of the American Falls Reservoir District.

For the replacement dam, the American Falls Reservoir District will act on behalf of the spaceholders with respect to contractual arrangements with the United States and with the Idaho Power Company. The district will secure financing for the construction program and will act as the constructing agency.

b. Idaho Power Company: The Idaho Power Company began operations with nine hydroelectric generating plants in August 1916. Currently, the company has assets of more than $600 million. It operates 14 major generating facilities and some smaller facilities with a maximum system capacity of about 1 million kilowatts. About 19,000 miles of transmission and distribution lines are also owned and operated by the company.

c. Spaceholders: Contracts for a water supply from the existing American Falls Dam and Reservoir were executed by the United States with 14 districts, 18 companies, 2 individuals, and on behalf of the Michaud Division of the Fort Hall Indian Reservation.

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3. Project History: American Falls Dam, a feature of the Minidoka Project, is centrally located within the project service area and is adjacent to the city of American Falls, Idaho. The dam was constructed by the Bureau of Reclamation in 1927 and forms a reservoir with 1.7 million acre-feet of capacity. Nearly half of the usable main-stem storage in the upper Snake River Basin of the Minidoka Project results from the impoundment. The upper Snake River Basin reservoirs (Jackson Lake, Palisades, American Falls, and Lake Walcott) are operated as a coordinated system to provide irrigation water to lands throughout the basin and to serve flood control, recreation, fish and wildlife, and power generation.

As of June 30, 1975, $6,979,335 had been repaid of the total construction charge obligation of $7,511,087 for the dam and reservoir. In March 1975, departmental approval was received for the form of a proposed repayment contract covering a $1.5 million rehabilitation and betterment program to modernize facilities of the Burley Irrigation District, which holds some 9 percent of active capacity in the existing dam and reservoir. The repayment contract was executed in January 1976, and funds are available to initiate the program this fiscal year.

Abnormal cracking throughout the concrete portion of the dam was reported as early as 1929 and has become progressively more severe so that the safety of the dam is impaired. As a result of stability analyses conducted in 1972 and studies by a private board of consultants, reservoir filling has been restricted to 11.3 feet below full pool at elevation 4,354.5 feet mean sea level. This restriction limits storage to 1,125 million acre-feet. The use of 575,000 acre-feet, or 34 percent of the reservoir capacity, is precluded.

4. Federal Authorization, Subsequent Actions, and Estimated Cost: In December 1972, the Regional Director, Bureau of Reclamation, Boise, Idaho, completed a preliminary special report which identified a plan to replace the American Falls Dam with a new concrete and earthfill dam immediately downstream from the existing dam. Following a request of the water users, the Idaho Power Company, in consultation with Bechtel Incorporated, evaluated alternatives to the proposed Federal replacement dam. The major objectives were to reduce costs to the water users and to facilitate earlier construction.

The following findings were presented to the water users: (1) A replacement dam utilizing portions of the existing dam could be constructed for about $20,700,000; (2) The replacement dam could be completed in about 15 months following initiation of construction; and (3) The Idaho Power Company would pay to the spaceholders an amount equal to the annual

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requirements for amortization of the spaceholders' bonds over a 40-year period, up to the actual cost of the dam but not to exceed $19 million plus interest, if the company were permitted to utilize the irrigation water released annually from the replacement dam for power generation. Such use would be at a new powerplant to be constructed, operated, and maintained by the Idaho Power Company at the replacement dam.

As the result of the findings by Bechtel Incorporated and the financing proposal by the Idaho Power Company, the water users supported legislation to authorize non-Federal construction. The Act of December 28, 1973, authorized the American Falls Reservoir District to: finance and construct the American Falls Replacement Dam Program; transfer the completed replacement dam and the related facilities to the United States to operate and maintain; contract with the present water users for the repayment of costs incurred in such construction; and contract with a non-Federal entity to use the water released from the replacement dam for power generation.

Subsequently, it was necessary to obtain approval from State and other Federal entities which have jurisdiction over various aspects of the proposed program. The following actions have now been consummated, contingent upon execution of the enclosed contracts:

(1) Approval by the State of Idaho and the Environmental Protection Agency of an amended water quality standard for dissolved oxygen content for a portion of the Snake River below American Falls Dam.

(2) A license from the Federal Power Commission (FPC) permitting the Idaho Power Company to construct and operate a new powerplant at American Falls.

(3) Agreements with the State concerning fish and wildlife mitigation.

(4) Enactment, on December 23, 1975, of Public Law 94-164 (89 Stat. 970). Section 7 of that act amends section 103 of the Internal Revenue Code of 1954 to provide tax-exempt status for the interest on bonds that the American Falls Reservoir District will issue to finance the construction program. The uncertain tax status of such obligations had been a major factor in delaying the construction start beyond the scheduled date of late 1974.

Another difficulty has been opposition by some of the water users to the magnitude of the payments to be made by the Idaho Power Company for the use of "falling water." After further negotiations with the Idaho Power Company, the amount of those payments was increased so that the company's

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annual payments to the district will be sufficient to retire, with interest, over a 40-year period the sum of (a) $19,550,000, (b) the costs of the water quality facilities, and (c) approximately one-half of all construction costs in excess of $38 million.

The total cost of the American Falls Replacement Dam Program, including fish and wildlife mitigation costs, water quality costs, financing costs, and other items not included in the original estimate, is now estimated at $40,750,000. To assure, to the extent possible, that sufficient bonds would be authorized in the spaceholder elections, that amount was increased to $44,750,000, of which $21,784,266 will be repaid by the spaceholders and $22,965,734 as falling water payments by the Idaho Power Company.

The financing and repayment arrangements were developed by a negotiating committee formed by the water user organizations. Although the Bureau of Reclamation participated in the negotiating sessions, it did not participate in determining the program cost estimates nor has it evaluated the benefits resulting from the use of the water for power generation to determine if the falling water payments are equitable.

5. Contractual Arrangements:

GOVERNMENT CONTRACT

The contract between the United States and the American Falls Reservoir District will authorize the district to finance and provide for the construction of the American Falls Replacement Dam Program; upon completion, to transfer the replacement dam and the related facilities to the United States to operate and maintain; and to provide for the utilization of water released from the replacement dam for power generation by the Idaho Power Company.

The contract is divided into six parts.

Part I defines terminology used in the contract and sets forth the term of the contract which will continue until mutually terminated. However, after April 1, 1977, either party may terminate the contract unless, prior to notice of termination or within 60 days after such notice by the contracting officer, the district has contracted to sell bonds to construct or equip the replacement dam.

Part II pertains to preconstruction and construction activities and:

(1) Requires the district to develop plans, designs and specifications, and a construction work schedule for the American Falls Replacement Dam Program. The district must also develop a plan of operation for the storage and release of water during the construction period. Each of these items must have been approved by the United States prior to the issuance of final designs and specifications for a facility.

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(2) Provides for the issuance of permits by the United States for the construction of the replacement dam on lands under its jurisdiction and for access by the United States, the district, and the company on lands of each entity.

(3) Provides for the supervision, inspection, and review of construction by the United States, the submission of construction progress reports, the handling of disputes between the contracting officer and the constructing agency, and other related matters.

(4) Indicates the intention of the United States to enter into an agreement with the State of Idaho for the use and the operation and maintenance of the two-lane highway on the crest of the dam.

Part III provides for operation and maintenance of the existing dam and coordination of water releases during the construction period. It also provides for transfer to the United States of title to the completed replacement dam, the related facilities, and the water quality facilities. The United States will operate and maintain the replacement dam and related facilities; the American Falls Reservoir District will be responsible for operation and maintenance of the water quality facilities. Under a proposed agreement, the Idaho Power Company will operate and maintain those facilities on behalf of the district.

In accordance with the authorizing act, the United States will continue an annual program for the correction and prevention of erosion along the reservoir. The costs of that program, as well as costs associated with operation and maintenance of the replacement dam, the related facilities, and the water quality facilities, will be paid by the spaceholders.

The general operating criteria for the replacement dam contains provisions of the authorizing act retaining the proportionate storage rights of the present water users who sign spaceholder contracts, the water surface elevation at the level created by the existing dam prior to the storage restriction, and the primary irrigation and incidental purposes of the project. It provides that the United States is not obligated to operate the replacement dam for power generation to the detriment of other project purposes or to maintain water elevations in the reservoir specifically for power generation.

Part IV deals with the contracts among the United States, the American Falls Reservoir District, and the spaceholders (Spaceholder contracts) and the contract between the American Falls Reservoir District and the Idaho Power Company (Falling Water contract). In this part, the continued delivery of water to the present water users is made contingent upon the execution of spaceholder contracts and each

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spaceholder's continued fulfillment of its contractual obligations. The right of the Idaho Power Company to utilize the water released from the replacement dam for hydroelectric generation at its powerplant to be attached to the dam is, in addition, contingent upon the fulfillment of the company's obligations under the Falling Water contract.

Procedures applicable to the storage space of present water users which do not execute spaceholder contracts (nonparticipating water users) or which fail to make the contractual payments as they become due (defaulted spaceholders), as well as the disposition of such water, are specified in this part of the contract. Within 30 days after execution of the Government contract, the United States is required to notify each nonparticipating water user of the conditions precedent to continued delivery of water. In summary, these are as follows:

a. Nonparticipating Water Users: Any nonparticipating water users will be placed in either of two categories: (1) those which called an election in which the electorate failed to approve the program, and (2) all others. A water user which fails to call an election (category 2) may not receive water during the year that the initial spaceholder payments become due (1977 under the present construction schedule), even though, at that date, water storage and delivery will still be from the existing dam; and unless a spaceholder contract is signed by April 1 of the second year that spaceholder payments are due, the right to the use of such space will terminate. A nonparticipating water user in category 1 may preserve its right to space until April 1 of the third year that spaceholder payments are due by executing a water rental contract the first year that spaceholder payments are due; however, this rental agreement will not permit the water user to use space or to obtain water service during the second year. In other words, permanent arrangements are required after the first year of water rental.

The authority for this arrangement is section 3 of the Act of December 28, 1973, which states ". . . the delivery of water to the spaceholders shall be contingent upon the execution of such contracts and the fulfillment of the obligations thereunder . . . ." That language was suggested in the Department of the Interior's legislative comments to cover the situation where a water user may be satisfied with the partial water supply it now receives with restricted operation of American Falls Dam and Reservoir.

b. Defaulted Spaceholders: In the event that a water user executes a spaceholder contract and subsequently fails to make the payments thereunder, the right to use that space or to take water will be immediately suspended. If the space is not redeemed within 1 year, by payment of delinquent charges plus a penalty for delinquent payment, the spaceholder contract will terminate.

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c. Disposition of Water: The United States will arrange for the use of the water accruing to the space of a nonparticipating water user or defaulted spaceholder, on a temporary or permanent basis as appropriate to the circumstances: first, for irrigation water use by other spaceholders not in default; second, for irrigation water use by nonspaceholders; and third, for use by the United States. If by May 15 of any year the United States has not arranged for the use of such space and reimbursed the Idaho Power Company for the supplemental falling water payments which the company is required to make on behalf of the nonparticipating water users and defaulted spaceholders, the water accruing to such space will be made available to the company for power generation.

The Act of December 23, 1975, provides tax exemption for interest on obligations for "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 . . ." if "substantially all of the stored water is contractually available for release from such dam for irrigation purposes . . . ." In reporting the bill (Report No. 94-531 dated October 3, 1975), the Committee on Ways and Means stated: "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 . . . ." To assure retention of the tax-exempt status of the initial bonds and any future issues, the United States is precluded from marketing more than 8 percent of the active storage capacity to the Idaho Power Company. In accordance with the committee report, this limitation does not apply to water which the company may acquire under 1-year arrangements resulting from its making the supplemental falling water payments.

The Idaho Power Company is guaranteed the right to utilize the water released from the replacement dam for power generation at the new powerplant so long as its FPC license is in effect and it has not defaulted on the Falling Water contract. In addition, the company may schedule for release, subject to specific reservations on use and scheduling, any water it acquires as the result of the United States not marketing water accruing to the space of a nonparticipating water user or a defaulted spaceholder.

The installation of water quality facilities is required because a change in the manner of releasing water from the reservoir may cause a degradation of the dissolved oxygen content of the water downstream which may be detrimental to the fishery resource. The water quality facilities will inject oxygen into the water passing through the powerplant at such times as the dissolved oxygen content approaches the amended State water quality standard of 6 parts per million.

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Should the United States determine that the water being released from the replacement dam through the powerplant does not meet the amended State water quality standard for dissolved oxygen content, the United States may bypass part or all of the water around the powerplant to the extent necessary to meet the standard. The operation of the water quality facilities, including the bypassing of water around the powerplant, is to be in accordance with operating criteria developed by the United States, the American Falls Reservoir District, and the Idaho Power Company.

That part of the contract also provides that the United States will submit schedules of anticipated water releases to the Idaho Power Company. Subsequently, the company will submit to the United States a schedule of the amount of such water to be used for power generation. Provision is made for emergency operating conditions and scheduled inspections, maintenance, and repairs to the replacement dam.

Part V provides for the payment of $293,978.17 of the cost incurred in the construction of the existing dam which had heretofore been allocated for return by the proposed Federal power generating facility which was not (and will not be) constructed. Since the costs cannot be written off without congressional authorization, the annual billing to the spaceholders for operation and maintenance costs will include an amount to return that unpaid construction obligation within 40 years. In addition, provision is made for quarterly advances of funds by the American Falls Reservoir District to cover costs to the United States in connection with its contractual responsibilities during construction of the replacement dam.

Part VI contains general contract provisions concerning books, records, and reports; rules, regulations, and determinations; nonliability for water shortages and claims relating to the American Falls Replacement Dam Program; contract confirmation; notices; and other standard contract provisions.

FALLING WATER CONTRACT

The contract between the American Falls Reservoir District and the Idaho Power Company covers the company's use of the water released from the replacement dam for power generation. It provides for determining the cost of the American Falls Replacement Dam Program payable by the company as falling water payments in recognition of the use of such water, coordinating construction of the powerplant with construction of the replacement dam, and other matters of mutual concern.

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Although the United States is not a party, the proposed contract will be approved by the Regional Director on behalf of the Secretary of the Interior, as required by section 4 of the Act of December 28, 1973. Provisions of the proposed contract are summarized below.

Articles I and II, respectively, contain the explanatory recitals and definition of contract terms and set forth the representations of the American Falls Reservoir District and the Idaho Power Company, reciting the district's compliance with the stipulations of the Act of December 28, 1973.

Article III pertains to the falling water payments to be made by the company in 40 annual installments to retire with interest the costs of the American Falls Replacement Dam Program assigned to the company for its use of the water released from the replacement dam. In addition, upon 10-day written notification from the American Falls Reservoir District or the United States, as the case may be, the Idaho Power Company will pay the amount of the annual payments which would be due from nonparticipating water users had they executed spaceholder contracts or which are due from any delinquent spaceholder. Such payments are referred to as "supplemental falling water payments."

The spaceholder payments are due April 1 and are considered delinquent after that time. Subsequently, the party to which the payment is delinquent (the American Falls Reservoir District or the United States) will notify the other parties of the delinquency. Within 10 days, the company will make the supplemental falling water payments, and the United States will have until May 15 to lease the space for that year to other parties or to arrange to retain the space for its use. If the United States does not consummate such arrangements and reimburse the company for its supplemental falling water payments, the company may, during that year, use the water accruing to such space for power generation. Such water may be used at any time from May 15 through December 31; however, its use during the period from November 1 through December 31 is restricted to a schedule that does not result in releases of water at Minidoka Dam in excess of the hydrologic capacity of Minidoka Powerplant, which is about 4,700 cubic feet per second at that time of year.

Article IV concerns the contract between the United States and the American Falls Reservoir District. It includes the obtaining of permits or interests in lands as necessary for construction of the replacement dam, the approval by the United States of the designs and specifications, the operation and maintenance of the replacement dam by the United States, and the manner of operation as it relates to the release of water and

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its use for power generation. It also covers the conveyance to the United States of title to the replacement dam, the related facilities, and the water quality facilities and the suspension or termination by the United States of the company's right to use the released water in the event of default in the falling water or supplemental falling water payments to the American Falls Reservoir District.

Article V refers to the 50-year license issued by FPC on March 31, 1975, for the construction and the operation and maintenance of a powerplant by the Idaho Power Company immediately downstream from the replacement dam. This article also relates the actions required if FPC fails to renew that license.

Article VI covers the designation and duties of three "authorized representatives," one each representing the American Falls Reservoir District, the Idaho Power Company, and the spaceholders. The authorized representatives will approve the award of construction and equipment contracts in connection with the American Falls Replacement Dam Program, establish general policies for administering the Falling Water contract and for coordinating construction of the powerplant with the replacement dam, handle matters pertaining to the determination of the cost of the program, and perform other similar duties as specified in the contract.

Article VII requires that construction of the powerplant (by the Idaho Power Company) be coordinated with construction of the replacement dam (by the American Falls Reservoir District) and provides for assignment of construction costs between the two. That arrangement is necessary because some of the work items for one structure can effect cost savings for work on the other. The article further provides for a final reimbursement of costs initially paid by one party which subsequently may be determined to be wholly or partly the responsibility of the other party.

Article VIII concerns the construction aspects of the American Falls Replacement Dam Program including: preparation of designs and specifications; issuance of bids; preparation of a final cost estimate; determination of the obligations of the Idaho Power Company and each spaceholder and the amount of bonds to be issued and deposited in a construction fund; and award or rejection of construction bids.

Article IX pertains to the sale of bonds to finance the construction program. Due to existing and anticipated market conditions, it may be advisable to secure interim notes in lieu of issuing long-term bonds. In that event, the Idaho Power Company will act as guarantor to improve the financing conditions of the interim notes.

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The board of directors of the American Falls Reservoir District is responsible for determining the amount, maturity, and redemption of the long-term bonds to be sold, the due date of first payments by the spaceholders and the Idaho Power Company, and related matters. Such determinations will be made upon the recommendations of, or in consultation with, the authorized representatives (article VI).

The falling water payments from the Idaho Power Company are to be determined by first computing the combined principal and interest installments due on all of the bonds issued for the project. That portion of the annual installments, as is represented by the following formula, will be assigned the Idaho Power Company under the proposed contract: $19,550,000 + A + (B x C).

A = Estimated cost of water quality facilities.

B = Amount in excess of $38 million for the American Falls Replacement Dam Program.

C = Factor to be determined on the basis of the company's entitlement to storage space adjusted for those costs identified to the company which are in excess of $38 million and for costs to other water users if the replacement program exceeds $38 million; computed to be .486405 for a program costing $40,750,000.

The balance of the combined principal and interest payments will be the responsibility of the spaceholders, including the Idaho Power Company, which is also a spaceholder as the result of an existing contract for 45,000 acre-feet of space. Provision is also made for a redetermination of the obligations if it is necessary to issue additional bonds.

Article X sets forth the responsibility of the Idaho Power Company for the financing and construction of the powerplant. Any joint facilities must first be approved by the authorized representatives. The financing, construction, ownership, and operation of such facilities shall be covered by special agreement subject to approval by the United States.

The Idaho Power Company will pay 33 percent of the annual direct costs incurred by the United States for operation and maintenance of the replacement dam. The remaining operation and maintenance costs incurred by the United States will be allocated to all of the spaceholders, including the Idaho Power Company, to the extent of its share as a spaceholder.

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Article XI concerns defaults. Article XII pertains to special covenants; i.e., compliance with laws, rules and regulations, right of access by the American Falls Reservoir District and the United States to the powerplant and to lands within the powerplant project area as defined in the FPC license. Financial reports and nonarbitrage provisions are included too.

Article XIII relates to contract assignments. Article XIV establishes the termination date of the contract as March 31, 2025, 50 years from the date of the FPC license, with renewal contingent upon renewal of that license.

SPACEHOLDER CONTRACT

The proposed contracts among the United States, the American Falls Reservoir District, and the spaceholder entities provide for each spaceholder to repay a proportionate share of the total costs incurred in the American Falls Replacement Dam Program. The form of the proposed contracts reaffirms the existing storage entitlements of each entity which (a) had previously contracted with the United States for a water supply from American Falls Dam and Reservoir, and (b) executes a spaceholder contract. While the existing contracts remain in full force and effect, the provisions of the proposed spaceholder contracts shall prevail wherever they may conflict with the existing contracts.

The construction charge obligation of each spaceholder will be determined as illustrated below:

Estimated total obligation for designing, constructing, and financing the American Falls Replacement Dam Program	$44,750,000
Less: Falling water payments by the Idaho Power Company	-22,965,734
Total obligation of all spaceholders	$21,784,266

Each spaceholder's obligation: $21,784,266 x $\frac{\text{Spaceholder's Storage Entitlement}}{\text{1.7 million acre-feet}}$

The spaceholder has the option of paying its obligation either as a lump-sum prepayment or in annual installments, with interest, over a 40-year period. The prepayment option must be exercised within 10 days after contract execution.

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In addition, the spaceholders are required to pay annually: (1) the costs incurred by the United States for the operation and maintenance of the replacement dam and the related facilities, including (a) costs of an erosion control program, and (b) the deferred project costs identified to the unconstructed Federal powerplant; and (2) the costs that will be incurred by the American Falls Reservoir District for operation and maintenance of the water quality facilities. Billings will be handled by the United States and the American Falls Reservoir District, respectively.

The proposed contracts provide the procedures to be followed in the event of default on the annual payments. If a default in 1 year is not corrected by April 1 of the next year, the contract can be terminated, leaving the spaceholder without further rights to the use of water from the reservoir. Remedies against the spaceholder are available to the United States and the American Falls Reservoir District in the event that the Idaho Power Company should then default under the Falling Water contract. Also included are the usual general provisions, somewhat modified to accommodate the contractual arrangements with the Idaho Power Company and the requirements of the bond counsel.

The form of the contracts is essentially identical for all spaceholders except:

(1) Modifications are provided for the type of entity or individual entering into the contract. (See inserts A and B following page 71 of the proposed contract form enclosed.)

(2) The contract with the American Falls Reservoir District also recognizes the district's role as the constructing agency.

(3) The enclosed contract with the Idaho Power Company, while reaffirming the existing contract, recognizes that certain provisions of that contract are no longer applicable and states the intent of the United States and the company to meet and review the existing contract for possible revision.

(4) The enclosed contract for water storage by the United States on behalf of its Michaud Division of the Fort Hall Indian Reservation contains several significant differences from the contracts with other spaceholders. It is included here for illustrative purposes only and will be discussed in a separate memorandum requesting your approval for the form of that contract. The Michaud Division has rights to 47,700 acre-feet of the active storage capacity in the existing dam pursuant to the Act of August 31, 1954 (68 Stat. 1026), and the April 25, 1957, Memorandum of Agreement between the Bureau of Reclamation

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and the Bureau of Indian Affairs. The Act of December 28, 1975, specifically recognizes those rights and authorizes payments by the United States, consonant with the Leavitt Act (47 Stat. 564), for that share of the cost of constructing and financing the American Falls Replacement Dam Program.

WATER QUALITY FACILITIES AGREEMENT

The agreement between the American Falls Reservoir District and the Idaho Power Company delineates the responsibilities of the American Falls Reservoir District on behalf of the spaceholders and the Idaho Power Company and covers the financing, construction, operation, and maintenance of the water quality facilities to be installed in connection with the American Falls Replacement Dam Program. The agreement will be approved by the United States, and a copy will be attached to each spaceholder contract.

6. Environmental Considerations: A draft legislative environmental impact statement was prepared in May 1973 and reviewed by all public and private organizations and individuals indicating an interest in the American Falls Replacement Dam Program. On November 13, 1974, a final legislative environmental statement (FES 74-60) was filed with the Council on Environmental Quality.

Pursuant to an agreement of July 2, 1974, between the Idaho Fish and Game Department and the American Falls Reservoir District, the State will construct, operate, and maintain facilities to mitigate the anticipated loss of existing recreational and fish and wildlife resources. The costs associated with such facilities are included as a part of the American Falls Replacement Dam Program. As previously discussed, water quality facilities are included in the program to permit the injection of oxygen, when necessary, to enhance the quality of water being released from the replacement dam through the powerplant. Provision is also made for bypassing water around the powerplant.

Recreation and fish and wildlife enhancement facilities are authorized for construction by the Act of December 28, 1973, in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213) and the provisions of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), as amended. A memorandum of agreement covering those arrangements will be forwarded for your approval at the appropriate time.

In addition, the FPC license for the powerplant requires that the Idaho Power Company develop certain recreation areas.

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7. Legal Considerations: The Field Solicitor, Boise, Idaho, and the Associate Solicitor - Energy and Resources have concluded that the proposed contracts are in proper legal form.

8. Findings and Recommendations: The proposed contracts will allow the replacement of a deteriorating Federal structure at a minimal cost to the Federal Government. The program and the proposed contracts will assure the continued availability of water supplies to a major agricultural area and help meet regional energy requirements. Accordingly, we believe that the contractual arrangements are in the best interests of the United States, the water users, and the Idaho Power Company.

The forms of the Government contract and the Falling Water contract have been approved by the respective boards of directors for the American Falls Reservoir District and the Idaho Power Company. The Spaceholder contracts have been approved by 20 of the 35 existing contractors after a two-thirds favorable vote at irrigation district elections pursuant to Idaho statute. Including the 47,700 acre-feet of space retained by the United States for the Fort Hall Indian Reservation, that approval represents rights to 1,357,633 acre-feet of space or 79.9 percent of the active reservoir capacity. This percentage could increase following action by the remaining eight entities holding 2.9 percent of the reservoir space.

We recommend that you approve the form of the following proposed contracts (dated or revised 11-24-75) in the enclosed document dated December 1975, with addendum dated February 20, 1976. This includes: (1) the contract between the United States and the American Falls Reservoir District (Government contract); (2) the contract between the American Falls Reservoir District and the Idaho Power Company (Falling Water contract); (3) the contract among the United States, the American Falls Reservoir District, and the spaceholders (Spaceholder contract), limited to the form for districts, canal companies, and individuals; and (4) the Water Quality Facilities agreement between the American Falls Reservoir District and the Idaho Power Company. We also recommend your approval of the form of the Spaceholder contract with the Idaho Power Company designated 1/5/76.

Your approval should be with the understanding that minor revisions, consistent with overall contract objectives, may be made prior to execution of the formal contracts. After execution by the other parties, the Regional Director, Boise, Idaho, will execute the Government contract and the Spaceholder contracts in behalf of the United States. He will also approve the Falling Water contract and the Water Quality Facilities agreement and will serve as contracting officer on your behalf for all of the contracts.

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9. Urgency of Approval: In the Senate debate on December 17, 1975, of the amendment that was enacted as section 7 of the Act of December 23, 1975, the need to proceed early in 1976 with the American Falls Dam Replacement Program was strongly emphasized. With your approval of the forms of the proposed contracts, the American Falls Reservoir District will proceed with marketing the bonds or interim notes, now scheduled for March 1, 1976. At that time, the district will also issue the construction specifications so that contracts may be awarded by June 1, 1976.

Such timing will permit scheduling of the construction program to minimize the adverse effects of evacuating stored water from the existing dam to permit the beginning of storage behind the replacement dam. That operation is expected to result in a temporary shortage of water for downstream users. Under the approved plan of operation during construction, the critical water period should occur late in the 1977 irrigation season, at which time the existing dam will be breached.

Accordingly, your early approval is requested.

Enclosures

Approved:

(Sgd) Jack O. Horton
ASSISTANT
Secretary of the Interior

MAR 5 1976
Date

bcc: Secretary's Reading File--RECLAMATION (2)
Associate Solicitor - Energy and Resources
Assistant Secretary - LW
Regional Director, Boise, Idaho
Field Solicitor, Boise, Idaho
E&R Center, Code 200, 400
Wyoming Reclamation Representative, Cheyenne, Wyoming
W.O. Code 140, 200, 300, 600, 700
(each w/o enclosures)
LBR:PR Gallagher:ss 2/3/76

AFF008824

Exhibit RR

United States Department of the Interior

NOV 4 1975

BUREAU OF RECLAMATION

FEDERAL BUILDING & U.S. COURTHOUSE
BOX 043-550 WEST FORT STREET
BOISE, IDAHO 83724

IN REPLY
REFER TO: 440
832.

Copies to
Paul Jauregui
Bill Arms
J.E. Bruce

Mr. John A. Rosholt
Attorney at Law
Box 525
Twin Falls, Idaho 83301

NOV 3 1975

Dear Mr. Rosholt:

By letter of October 10, 1975, you transmitted for our consideration drafts of proposed spaceholder contracts between (1) the United States and the American Falls Reservoir District, (2) the United States acting for the Michaud Division, Fort Hall Indian Reservation and the American Falls Reservoir District, and (3) the United States, the American Falls Reservoir District, and the Idaho Power Company. Our comments at this time are directed toward the contract draft referred to in item 3 above.

Article 19(a) of the draft of contract provides that the contract constitutes a reaffirmation by the United States of the rights of the Idaho Power Company under its existing contract (June 15, 1923) and further provides that the provisions of the existing contract shall in all respects remain in full force and effect except that the provisions of the new contract shall prevail in those instances where they conflict with the 1923 contract. The 1923 contract contains many provisions that are no longer pertinent because they deal with transactions that have long since been completed, or with the division of water between a private powerplant and a Federal powerplant, the latter of which was never constructed.

We believe that it would be preferable to terminate the 1923 contract and enter into a spaceholder contract whereby the rights of the Idaho Power Company are delineated as to the use of 45,000 acre-feet of storage capacity for release for power generation as well as to the use of irrigation water releases from the replacement dam for power generation at the proposed American Falls Powerplant. We will prepare a draft of contract along the foregoing lines and submit it for further consideration.

Another matter which we would like to mention is the need for a plan of operation during the construction of the replacement dam. As you are aware, the Government contract provides that the American Falls Reservoir

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District will be responsible for the preparation of an operating plan which must be approved by the United States prior to the approval of the final designs and specifications. Such approval is contingent upon written notification from the "Committee of Nine" that it is acceptable to the spaceholders entitled to an aggregate of not less than two-thirds of the active capacity of American Falls Dam and Reservoir.

It is our understanding that the proposed plan of operation will require the curtailment of irrigation deliveries in September and October not only to the present American Falls Reservoir water users but to other water users which the United States is obligated to serve under existing contracts. We are concerned of the approval of such a plan as it may affect our contractual commitments and it may be necessary to require some action to secure approval of all affected water users.

Due to the significance of this matter and its effect upon the American Falls Replacement Dam Program, including the approval of the form of contracts, a draft of a plan of operation needs to be prepared, which we understand is now being assembled, reviewed by this office to determine the affect it will have on our capability of providing irrigation service, and concurred in by the affected parties.

Sincerely yours,

Assistant [illegible] N. H. Moore

Regional Director

cc: Idaho Power Company
1220 W. Idaho, Boise, ID 83706
Attention: Robert A. Hogg

AFF004301

Exhibit SS



IDAHO POWER COMPANY

BOX 70 BOISE, IDAHO 83721

November 18, 1975

Mr Phillip H Holm
Chapman and Cutler
111 West Monroe Street
Chicago, Illinois 60603

Dear Phil:

In regard to your letter of November 12, 1975 to John Rosholt, I want to be sure there is no misunderstanding of my position in regard to the 1923 Agreement. While my time has been limited, my brief analysis of the Bureau's suggested changes to the 1923 Agreement indicates they are completely at variance with their verbal description and Section 2(a) of Public Law 93-206, which states in part as follows:

> "* * * shall in no way alter or change the present proportionate storage rights of present spaceholders in the American Falls Reservoir and shall constitute a reaffirmation of existing contract rights between the Secretary and the spaceholders except as otherwise provided in this Act."

Whatever changes may need to be made in the 1923 Agreement to delete the items which were planned but did not occur should, in my opinion, be set forth in a separate amendatory agreement not related to the Replacement Dam program. The Bureau's proposed changes are extensive and at this late date any consideration of them would delay the program.

Very truly yours,

Robert A Hogg

RAH:d
cc: Messrs Burpee, Hobdey, Ling,
Vinsonhaler, Rosholt, Jauregui

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Exhibit TT

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
THE IDAHO FIRST NATIONAL BANK BUILDING
P.O. BOX 525
TWIN FALLS, IDAHO 83301

TELEPHONE
(208) 733-3722

OUR FILE NUMBER

R. P. PARRY
T. M. ROBERTSON
JOHN H. DALY (1913-1968)
BERT LARSON
C. G. McINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE

March 12, 1976

APR 7 19

Ms. Patricia Woolf	Rudy Canal Company Harrision Canal Company Enterprise Canal Company
Joe Anderson	Snake River Irrigation District
C. Timothy Hopkins	Progressive Irrigation District
John Hansen	New Sweden Irrigation District
Ray Rigby	Enterprise Irrigation District
[illegible]	Trego Ditch Company
Vern Kidwell	Butte Market Lake Canal Company
Kent Foster	Dilts Irrigation Company Martin Canal Company
William Holden	Blackfoot Canal Company Corbett Slough Ditch

Re: Spaceholder Contracts - American Falls Dam Replacement Program
Signing Session - March 18, 1976 - Idaho Falls

Dear Lawyers:

This letter is addressed to you in your representative capacity of the above listed spaceholder organizations that have successfully passed elections on the American Falls Replacement Program Spaceholder contracts. I thank each of you for your help with your respective clients in getting the needed documentation back to us.

We now have the printed spaceholder contracts and I enclose with each individual letter, one copy of the printed contracts for each of your clients as shown above.

Because of our time constrictions, and the necessity to proceed to institute the confirmation action in hopes of completing it at the earliest possible opportunity, it is necessary that we have contracts signed. As you all know, the Secretary of Interior last week authorized the Regional Director to execute the necessary contract documents. After they have been executed, they will be attached to the confirmation complaint as exhibits.

The American Falls Reservoir District Board would also like to be assured that those organizations that have voted yes have executed contracts before they proceed to borrow interim money to meet our financial commitments. Some approximately $3.5 million dollars worth of equipment contracts have been awarded, and it is now necessary to secure the necessary construction insurance, and generally proceed to do those things necessary to award a general contract in May, if favorable bids are received.

I apologize for this short notice. However, I must ask that each of you contact the President and Secretary of your respective boards of directors and bring them to a "signing" session at the Ponderosa Inn in Idaho Falls on Thursday, March 18, at 1:30 p.m. Bond counsel has requested that each spaceholder organization execute on the order of 30 copies of the contract so I would also request that each of you bring your notary seals so as to be able to help notarize the signatures of your Presidents and Secretaries on the contract. The Secretaries also need to bring the seal of the District or the Company.

My principal purpose for writing is to answer allegations that have been made publicly that the contract drafts of September 3, 1975, have been substantially changed. I will attempt to hereafter delineate the changes. The election notices provided the vote be on the contract drafts "substantially" in the form of the drafts of September 3, 1975. The changes do not enlarge the Spaceholders' obligations and in most cases are changes to the benefit of the spaceholder. My references below will identify the location of the changes in the printed draft and you can check them back against your September 3, 1975, draft by Article number.

1. At page i, in line 5, of the title, the comma after the word "Construction" has been ommited and the word "and" inserted in lieu thereof.

2. In the introductory paragraph, page 1, following the parentheses near the end of line 4, the words "as amended" have been deleted since the tax amendment which passed was to the Internal Revenue Code rather than the authorization Act of December 28, 1973. The words "as amended" have been deleted throughout the contract wherever a similar reference had been made.

3. In paragraph 2, in line 2, after the words "Federal Reclamation Laws" the words "primarily for the furnishing of water for irrigation purposes" have been inserted to more clearly emphasize the irrigation nature of the project and more closely conform to the language of the amendment to the Internal Revenue Code.

4. Paragraph 4 at page 1 has been altered and the reference to "35 Spaceholders" now reads "Waterusers". It became apparent after

January elections that all 35 entities were not in accord and the word "Spaceholders" was changed to "Waterusers" so as to be consistent with our defined terms of "Waterusers" and "Spaceholders" at page 5 and 6 of the printed contract.

5. The words "primarily for the furnishing of water for irrigation purposes as a feature" were added to the last line of paragraph 6, page 1. The reason is the same as in paragraph 3 of this letter.

6. In paragraph 7 at page 1, line 1, the word "Spaceholders" was changed to "Waterusers." Some who have voted against the project have advanced money and it was always contemplated to refund the advanced money to all who have paid it when the project proceeds.

7. The first word in the last line on page 1 was changed from "agree" to "agreed" to reflect proper tense.

8. Paragraph 10 at page 2 was amended and the words which appear in parentheses in lines 2 and 3 was added to reinforce the language for the same reasons as in paragraph 3 of this letter.

9. The word "and" was dropped as the last word in paragraph 17 at page 2.

10. In the definition of "Indenture" at page 4, after the closing parenthesis, a period was added and the remainder of the definition was deleted.

11. In the definition of "Related Facilities" the language following the last comma was changed at the Bureau's request to better describe this requirement. It does not enlarge the Spaceholders' obligation in regard to "Related Facilities."

12. In the definition of "Related Facilities", after the words "scenic overlook" in the next to the last line, the "comma" was dropped, the word "and" was dropped and the word "including" was added to track with the Government Contract.

13. In the definition of "Spaceholder Contract" the words "as the same may be supplemented or amended" were added to the end of the definition so the term "Spaceholder Contract" would cover any supplement or amendment.

14. The same language as in paragraph 13 of this letter was also added to the definition of "Spaceholder Contracts" and appears as the last words on page 5.

Spaceholder Agreement [illegible]

15. The words "and to return the unpaid costs of the existing dam as set forth in Article 28 (c) hereof." was added to clarify in the

definition that the Power Company would repay a share of the obligation of Paragraph 28(c) on the basis of O and M percentages, which lessens the obligation to the other Spaceholders.

16. At page 7, in paragraph 20(b) the words "for the Replacement Dam" were inserted after the word "plans" in the third line above the colon preceding subparagraph (1).

17. In paragraph 20(b)(1)(ii) at page 7 the "+" was changed to a "&" in the definition of "USC&GS datum;" and this change was carried out where appropriate throughout the contract.

18. In paragraph (iv) immediately below on page 7 the word "spillway," was added ahead of the word "intake".

19. In paragraph 20(b)(5) at page 8 the phrase on the end of the paragraph following the last comma was added for the reason that the government may allow the destruction of the Island Powerplant, thus saving construction costs for the Spaceholders.

20. In paragraph 20(c)(B)(2), at page 8 "Spaceholders" was changed to "Waterusers" in two places in the paragraph to again reflect the trustees authorization to pay back advanced monies to organizations who have advanced them, but elect not to proceed to participate in the project.

21. At page 9, a new paragraph was added as number (13), and the previous paragraph (13) was redesignated (14). We had agreed with the Bureau that the contracts should be drafted on the basis that all wateruser organizations would participate in the replacement program. Obviously, unsuccessful elections indicated that there would be Non-Participating Waterusers. It was also understood that all damage charges would be O & M expenses against the Spaceholders, the same as they would be now handled under the Palisades contracts. The Field Solicitor had rendered a legal opinion to the Interior Department Solicitor dated December 24, 1975, which the Spaceholder representatives felt was a different interpretation than what had been agreed and what the words contemplated. Consequently, at a February 11, 1976, meeting, a new paragraph (g) was added to Article 17 of the Government Contract. Also a change was necessary to Article 25 of the Government Contract. Copies of both are attached. The changes clarified the "hold harmless" obligation to the Government and clarifies that said obligation is an obligation of all the Spaceholders, not just of the American Falls Reservoir District. This was the understanding of the Spaceholder Representatives during the negotiations. This paragraph (13) provision merely allows that if bond funds are available, the damage claims can be paid from bond proceeds, or if no such bond proceeds are available, that any excess could be assessed as operation and maintenance cost against the Spaceholders.

R - entitled Payment for Costs in Advance & Distribution of Stored Water. -
Art 30 A. - U.S. Canal Co Palisades Contract

22. In the first line of page 10, an "s" was dropped from the word "Spaceholder" which appears before the word "Contracts" at the end of the line.

23. Changes in the first two lines of Article 23(a) at page 10 is to facilitate a more flexible prepayment opportunity for the Spaceholders. Rather than require prepayment be made within 10 days after the effective date of the Spaceholder Contract (which would be the date established in Article 51 hereof) changes were made in that the first two lines of Article 23 at page 10 so the notice of the opportunity to prepay will be delayed until the bond sale is eminent so as to not deprive any Prepaying Spaceholder of the use of their money ahead of the time that the money be required to meet the requirements.

24. The last number in the last line of Article 23(a) was changed from "8.7" to "8.6". This was a typo.

25. The first line of page 13 was changed to correct a typo and the year "1943" was amended to properly reflect "1954" as the proper Internal Revenue Code citation.

26. I am enclosing a copy of page 14 of the Spaceholder Contract underlining all of the changes that have been made to that page. All are additions except subparagraph (c) where the reference was changed from Article 20(b) to Article 21(b). It was a typo.

27. In Article 28(f)(2) at the top of page 15 in line 4, the date February 1 was changed to February 20 to correspond with other Bureau of Reclamation billing dates.

28. The references to 3 and 10 days in Article 29(a) were changed to "5" and "12" respectively to allow more notice time.

29. Article 29(b) at page 15 has been changed in line 3 after the word "second" to the semicolon in the next line after the word "Spaceholder" to again reflect the intention that "a Non-Participating Spaceholder" should not be entitled to rent his water if he is in default. This is a clarification with no change in meaning.

30. The spelling of the word "determined" in the second line on page 18 was corrected.

31. You probably also noted that the draft of the September 3, 1975 had no Article 32. Consequently, all paragraphs beginning at page 18 have been renumbered so as to eliminate the gap in numbering.

32. In Article 37(a) on page 19, in the fourth line thereof, a parentheses and comma have been added after the word "water" in the middle of the line.

33. In Article 46(b) at page 22, in line 5 thereof, the previously used word "Shareholder" was a typographical error and has been changed to "Spaceholder".

34. For the purposes of style, all the unnumbered paragraphs in Article 47 after subparagraph (c) have been numbered with letters in parentheses through subparagraph "(h)".

35. The acknowledgements at pages 25 and 26 have been changed to reflect the proper Idaho statutory form. The previous acknowledgement forms had been taken from the existing Palisades contracts.

36. A clarifying amendment was also made to Article 15 of the Water Quality Facilities Agreement, (which is attached to the Spaceholder Contract as an exhibit) so as to provide a mechanism for determining whether or not the constructing agency had made its Water Quality Facilities Operation and Maintenance Payment and to notify the contracting officer if such is not made. This provides an assurance to the Spaceholders that the American Falls Reservoir District is also paying its share.

There is a possibility I have missed some clerical changes and perhaps some minor word changes. In our opinion, the changes do not enlarge but in fact reduce the Spaceholders' obligations or are changes which operate to the benefit of each spaceholder. If there are questions, don't hesitate to contact me at your earliest opportunity. I look forward to seeing all of you in Idaho Falls on March 18th.

Respectfully submitted,

John A. Rosholt

JOHN A. ROSHOLT
Attorney for American Falls
Reservoir District

JAR/lkb

cc: Board Presidents and Secretaries
Ray Andrus
Lloyd Olson

Exhibit UU

B-54
USBR PN Reg.
10/72

REGIONAL OFFICE ROUTI' 'IP

Attention	Attention	Attention
___REG DIRECTOR	___MGMT/DATA PR	GENL SERV
___ASST REG DIR		STENO SERV
___ASST TO R D	___PROG COORD	CENT FILES
___	___FINANCE	MAIL ROOM
___PLANNING	___PERSONNEL	___PRINTING
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___W & L OPR	___SAFETY	✓ FLD SOLIC Burpee
___POWER	___ENVIRONMENT	

OFFICE OF THE SOLICITOR
FIELD SOLICITOR
BOISE, IDAHO
NOV 28 1975

NOTE: This is a BOR - IPC draft combined. It contains proposals of BOR draft dated 11-24 and IPC draft dated 11-26. 600 11-28
(Name) (Date)

PURPOSE AND TERM

The Idaho Power-Company-and-the-United States-entered-into the Existing Spaceholder Contract-which-provides,-among-other-things,-for-the-entitlement-of the Idaho Power Company to-use-45,000 acre-feet of-storage-capacity in-the-Existing Dam. 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. The Existing Spaceholder Contract between the Idaho Power Company and the United States provides for certain rights, among them, the Idaho Power Company's primary storage right to use 45,000 acre-feet of capacity in the Existing Dam.* Nothing herein shall in any way alter or change the present-proportionate storage rights of the Idaho Power Company as-it-relates to the use of the 45,000 acre-feet of storage capacity, and this Spaceholder Contract and the American Falls Replacement Dam Program constitute a reaffirmation by the United States of the rights of the Idaho Power Company to ~~mx~~ the use of 45,000 acre-feet of *primary* storage capacity 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 as to the 45,000 acre-feet of storage capacity 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~~ *relating* to the operation and maintenance

thereof and the distribution of water therefrom, shall prevail during the term of the Falling Water Contract or any renewal thereof over the provisions of the Existing Spaceholder Contract ~~wherever-and-to-whatever-~~ to the extent the provisions of the Existing Spaceholder Contract are expressly in conflict with the provisions of this Spaceholder Contract. ~~The provisions-of the Existing-Spaceholder-Contract as-to matters other than-the-45,000 acre-feet of-storage-capacity shall remain-in force and effect-provided that-they are not in-conflict with-this Spaceholder - Contract, the Government-Contract,-the-Falling-Water-Contract and the Act of-December 28, 1973.~~ Nothing in this Spaceholder Contract shall in any way alter or change any of the rights of the Idaho Power Company under the Existing Spaceholder Contract with regard to any water, storage, use or flow right obtained or reserved by the Idaho Power Company under the Existing Spaceholder Contract. However, The United States and the Idaho Power Company recognize that ~~some-of these provisions~~ certain provisions not herein mentioned of the Existing Spaceholder Contract may no longer be applicable and it is the intent of the United States and the Idaho Power Company to subsequently meet and review ~~and-amend~~ the Existing Spaceholder Contract ~~as-mutually-determined~~ for possible amendment. The provisions of the Existing Spaceholder Contract which have application to any otherreserved works of the Minidoka Project shall come in all respects, continue in effect and shall continue to apply to any other ~~xx~~ reserved works of the Minidoka Project.

1923 Contract, Article 21 - Releases of winter water to go to Shoshone Falls are required to be made in such a way that not more than 3,000 acre-feet of storage at Walcott has to be used to regulate the American Falls ~~Rex~~ releases.

The Idaho Power Company and the United States entered into the Existing Spaceholder Contract which provides, among other things, for the entitlement of the Idaho Power Company to use 45,000 acre-feet of storage capacity in the Existing Dam. Nothing herein shall in any way alter or change the present proportionate storage rights of the Idaho Power Company as it relates to the use of the 45,000 acre-feet of storage capacity and this Spaceholder Contract and the American Falls Replacement Dam Program constitute a reaffirmation by the United States of the rights of the Idaho Power Company to the use of 45,000 acre-feet of storage capacity 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 as to the 45,000 acre-feet of storage capacity 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 distribution 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 as to matters other than the 45,000 acre-feet of storage capacity shall remain in force and effect provided that they are not in conflict with this Spaceholder Contract, the Government Contract, the Falling Water Contract and the Act of December 28, 1973. However, the United States and the Idaho Power Company recognize that some of these provisions of the Existing Spaceholder

Contract may no longer be applicable and it is the intent of the United States and the Idaho Power Company to subsequently review and amend the Existing Spaceholder Contract as mutually determined.

Exhibit VV

832. 440

JAN 26 1976

JAN 2 6 1976

WB 1-23-76
OFFICE OF THE SOLICITOR
FIELD SOLICITOR
BOISE, IDAHO

JAN 26 1976

Memorandum

To: Commissioner, Washington, D.C.
Attention: 440

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.

(Signed) N. H. Moore

Enclosure (3)

cc: Field Solicitor, Boise, Idaho
(w/copy of enclosure)

AF014084

Exhibit WW

95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 95-701

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, 1978.—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 1,700,000 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 900,000 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 $678,516.52 of irrigation costs remained unrepaid to the United States of the total Federal irrigation investment amounting to $7,511,067.11. 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 8 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 1979 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 94-801, 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					
Clerical and stenographic	1.0	1.0			
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	2.8			
Estimated additional expenditures:					
Personnel 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, 1978.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY.
Washington, D.C., November 30, 1978.

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, 1978 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, 1979 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 XX

94TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPORT No. 94-531

13099-8

TAX EXEMPT STATUS OF OBLIGATIONS USED TO PROVIDE CERTAIN IRRIGATION FACILITIES

OCTOBER 8, 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 case 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 believes 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 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, 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 2.05 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 by 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 5 (b) and (d), 7, 18 (b) and 22(d) of that Act as amended (40 Stat. 290; 48 Stat. 20, 775; 40 Stat. 291, 1310; 55 Stat. 8; 31 U.S.C. 752a, 754, 747, 758, 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 4 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 mortgagee 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 18 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. 856; 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 bonds 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 YY

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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 46,000 acre-feet (2.66 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 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 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. 760);

(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. 760);

(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 mortgagee 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 8 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).

O

Exhibit ZZ

THEODORE S. CHAPMAN (1877-1943)
HENRY E. CUTLER (1879-1959)

LAW OFFICES OF

CHAPMAN AND CUTLER

111 WEST MONROE STREET

CHICAGO 60603

726-6130
AREA CODE 312
TWX 910-221-2103

RALPH F. HUCK
PAUL W. CUTLER
FREDERICK O. DICUS
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LYMAN L. MITCHELL
PETER V. FAZIO
JOHN N. VANDER VRIES
JOHN A. CUTLER
BRUCE L. MOORE
NORMAN R. GENUNG
DEE W. WATTS
JOHN A. MORRIS
FRANK J. MOONEY
KEEHN LANDIS
MANLY W. MUMFORD
WILFRED A. MOLDERMAKER
WILLIAM C. WELCH
ROBERT W. SHARP
GEORGE D. RAMSPECK
PETER P. COLADARCI
JAMES N. ZARTMAN
RICHARD C. HOWARD
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DAVID TALLANT, JR.
DAVID H. NELSON
ABBEY BLATTBERG
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SAMUEL J. HENRY
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HOWARD H. HUSH, JR.
LARRY ELKINS
ROBERT V. LEWIS
DAVID G. WILLIAMS
DANIEL J. KUCERA
RICHARD H. GOSS
C. ROBERT FOLTZ
JOHN M. DIXON
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RICHARD J. SCOTT
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JEFFREY I. MULLENS
CHRISTOPHER D. NEWMAN
RICHARD G. SMOLEV
ROBERT W. OLLIS, JR.
TIMOTHY E. PICKRELL
RONALD E. RODEN
THOMAS R. WOOLSEY
TIMOTHY R. SCHWERTFEGER
PAUL C. MARENGO

October 7, 1975

BUREAU OF RECLAMATION
OFFICIAL FILE COPY
Rec'd OCT 10 1975

William Burpee
Field Solicitor
Department of the Interior
Federal Bldg.
Box 043, 550 West Fort Street
Boise, Idaho 83724

FILE

Dear Bill:

As you have undoubtedly heard, the proposed legislation to provide tax exemption for the American Falls Reservoir District bonds was re-introduced in the House of Representatives as a general amendment to Section 103 of the Internal Revenue Code. Inasmuch as the general amendment does not mention the district, although the Committee Report makes clear that it is intended to apply to the American Falls situation, I believe it will be necessary to establish in the contracts that we meet the tests of the new legislation. This probably can be best accomplished by additional language in the recitals, and in the representation sections of the Falling Water Contract.

We will try to work this language out so as to make as few changes as possible, but I wish to let you know of this possibility in connection with the Bureau review of the contracts.

Yours very truly,

CHAPMAN AND CUTLER

By Philip H Holm

PHHolm:r
cc - Cecil D. Hobdey
Robert A. Hogg
Roger Ling
Norman Nielson
John A. Rosholt
Larry Vinsonhaler
Rod Vissia

Via Airmail

AF010622

Exhibit AAA

M E M O R A N D U M

To: Mr. Burpee
Mr. Hobdey
Mr. Hogg
Mr. Jauregui
Mr. Ling
Mr. Rosholt
Mr. Vinsonhaler

November 12, 1975

From: Mr. Holm

Re: Changes to American Falls contracts arising from passage of substitute for H. R. 9968

GOVERNMENT CONTRACT

1. P. 1 L. 14 after "Dam"
"primarily for the furnishing of water for irrigation purposes"

2. P. 2 L. 8 after "maintained"
"primarily for the furnishing of water for irrigation purposes"

3. P. 2 L. 12 after "Dam"
"(which utilization shall be subordinate to the furnishing of water for irrigation purposes)"

4. P. 26 L. 5 before "utilization"
"subordinate"

5. P. 35 L. 19 after "Payments"
", which utilization is and shall continue to be subordinate to the furnishing of water from the Replacement Dam for irrigation purposes, in that less than 10% of the normal supply of stored water may be contractually scheduled for release by the Idaho Power Company, except for temporary increases following a default by a Non-Participating Wateruser or a Spaceholder as provided for in (b) of this Article or arising from unusually wet or dry weather in the service area of the Replacement Dam."

4. P. 34 add new "(i)"

"(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 normal supply of stored water in the Replacement Dam for the purpose of scheduled releases for generating electric energy, which together with the amount of 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."

5. P. 55 L. 12 after "Contract"
", except as provided in Section 2.3(i) hereof"

IPC SPACEHOLDER CONTRACT

1. P. 26 Comply Section 21 to Section 21 of the general form of Spaceholder Contract.

2. P. 26 add new "(d)" and new "(e)"

"(d) The Spaceholder agrees that so long as any of the Bonds or Interim Notes are outstanding and unpaid, it will not acquire, on a permanent contractual basis, an additional amount of the normal supply of stored water in the Replacement Dam for the purpose of scheduled release for generating electric energy, which, together with the aforesaid 2.6471% of the active capacity of the Replacement Dam, would exceed eight per cent (8%) of the active capacity of the Replacement Dam.

"(e) So long as any of the Bonds or Interim Notes are outstanding and unpaid the Spaceholder shall not exercise its right to schedule the release of stored water from the Replacement Dam pursuant to this Spaceholder Contract in a manner which would cause the Replacement Dam to be considered as other than 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, for all purposes of Section ____ of the Act of Congress approved _____, 1975 (____ Stat. ____)."

Exhibit BBB

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. 11r-733, between the United States and the Spaceholder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Secretary" shall mean the Secretary of the Interior.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PURPOSE AND TERM

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

tion of water therefrom, shall prevail over the provisions of the Existing 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 CCC

SPACEHOLDER CONTRACT
AMONG
THE UNITED STATES,
THE AMERICAN FALLS RESERVOIR DISTRICT,
AND
THE ABERDEEN-SPRINGFIELD CANAL 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. 14-06-W-24 S

SPACEHOLDER CONTRACT AMONG THE UNITED STATES, THE AMERICAN FALLS RESERVOIR DISTRICT, AND THE ABERDEEN-SPRINGFIELD CANAL 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. 14-06-W-24 S

SPACEHOLDER CONTRACT AMONG THE UNITED STATES, THE AMERICAN FALLS RESERVOIR DISTRICT, AND THE ABERDEEN-SPRINGFIELD CANAL 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 THE ABERDEEN-SPRINGFIELD CANAL COMPANY, a corporation organized and existing under the laws of the State of Idaho and having its principal place of business at Aberdeen, Idaho, hereinafter called "Spaceholder";

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 October 22, 1952, symbol and No. 14-06-W-24, as amended by contract dated September 26, 1963, wherein the Spaceholder is entitled to stored water accruing to (1.9160%) of the active water storage capacity of the Existing Dam; 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 Construction 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 approxi-

mately 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 presently designated in the Existing Spaceholder Contract 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 arrange-

ments 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 October 22, 1952, symbol and No. 14-06-W-24, as amended by contract dated September 26, 1963, 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.

"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 Govern-

ment 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 Aberdeen-Springfield Canal Company, an Idaho corporation.

"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 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 the Idaho Power Company pursuant to the 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.

"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 distribution

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.

(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 4354.5 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 Constructing 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 1.9160% 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 $417,387, without interest, to the Constructing Agency for deposit by the Constructing Agency into the Prepayment Fund to be established by the Constructing Agency and to be used by the Constructing Agency solely for the purpose of paying the proportionate share of the Spaceholder

of the total Cost of Construction of the American Falls Replacement Dam Program. If the Constructing Agency does not issue its Series 1976 Bonds, the Constructing Agency shall cause the prepayment to be returned to the Spaceholder, without interest. In accordance with the provisions of Section 8.3 of the Falling Water Contract, after the final estimated cost of the American Falls Replacement Dam Program has been determined and the amount of the Series 1976 Bonds to be initially issued has been determined, the Constructing Agency on or prior to the delivery of the Series 1976 Bonds, shall transfer from the Prepayment Fund into the Construction Fund that portion of the Spaceholder's prepayment so deposited into the Prepayment Fund as is shown on the schedule of the obligation of the Spaceholder to be filed with the Spaceholder in accordance with the provisions of Section 8.3 of the Falling Water Contract. If Additional Bonds are issued pursuant to the provisions of Section 9.10 of the Falling Water Contract, the Constructing Agency, on or prior to the delivery of such Additional Bonds, shall transfer from the Prepayment Fund to the Construction Fund that portion of the Spaceholder's prepayment shown on the schedule contemplated to be filed with the Spaceholder in accordance with the provisions of Section 8.6 of the Falling Water Contract.

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

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

Spaceholder Bond Payments

24. (a) If the Spaceholder does not make the prepayment within the time and in the manner as permitted under Article 23(a) hereof, it shall be deemed that the Spaceholder has elected to pay the principal amount of its proportionate share of the total Cost of Construction of the American Falls Replacement Dam Program, plus applicable interest, in 40 approximately equal annual installments to be shown on the Schedule of Spaceholder Bond Payments to be furnished to the Spaceholder by the Authorized Representatives in accordance with the provisions of Section 9.8 of the Falling Water Contract or as such Schedule of Spaceholder Bond Payments may be revised in the event that Additional Bonds are issued by the Constructing Agency pursuant to either Section 9.10 or Section 9.11 of the Falling Water Contract. Unless sooner terminated as provided in Article 19(c) hereof, and subject only to the issuance by the Constructing Agency of its Bonds, the Spaceholder shall pay the Spaceholder Bond Payments on April 1 of each of the years as shown on the Schedule of Spaceholder Bond Payments to be filed with the Spaceholder directly to the Trustee for the account of the Constructing Agency, in lawful money of the United States, at the Trustee's address shown in the Indenture, or at such other place as the Trustee from time to time shall designate. The Spaceholder shall pay to the Trustee annually at the same time as it pays the Spaceholder Bond Payments that portion of the yearly fees,

charges and expenses of the Trustee and any paying agent bank contemplated in Section 1002 of the Indenture, not paid from funds in the Bond Fund and as are assigned to the Spaceholder by the Authorized Representatives.

(b) Any amounts remaining in the Bond Fund after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture) and the fees, charges and expenses of the Trustee and paying agents in accordance with the Indenture and all other amounts required to be paid under the Spaceholder Contracts, the Falling Water Contract and this 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 their 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 (1.8276%) 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 4,354.5 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) (1.9680%) 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) (1.8276%) 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, an 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. The Spaceholder shall establish and maintain accounts and other books and records pertaining to its financial transactions, land use and crop census, water supply, water use, changes of project works, and to other matters as the Contracting Officer may require. Reports thereon shall be furnished to the United States in such form and on such date or dates as the Contracting Officer may require. Subject 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 exclusion of lands, dissolution, consolidation or merger, except upon the Contracting Officer's written consent.

Levies and Assessments by Spaceholder; All Benefits Conditioned Upon Payment; Lien to Secure Obligations

37. (a) The Spaceholder shall cause to be levied and collected all necessary assessments and charges against its members and stockholders and will use all the authority and resources of the Spaceholder (including, without limitation by reason of this enumeration, its power to create liens and to withhold the delivery of water) to meet the obligations of the Spaceholder under this Spaceholder Contract.

(b) Should the Spaceholder fail to levy the assessments and other charges against any land or the owners thereof as required by this Spaceholder Contract, or, having levied, should the Spaceholder be prevented from collecting such assessments or other charges by any judicial proceedings or otherwise fail to collect them, such land and owners shall not be entitled to receive water made available under this Spaceholder Contract and the Spaceholder, except as otherwise ordered by a court of competent jurisdiction, shall not deliver such water to such lands or the owners thereof.

(c) Any construction charge obligations owing on the Existing Spaceholder Contract and this Spaceholder Contract shall be and remain a lien on the Spaceholder's storage rights in the Replacement Dam until paid or otherwise satisfied.

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—CONFIRMATION BY IRRIGATION DISTRICTS

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) The Spaceholder shall at its cost cause the execution of this Spaceholder Contract to be approved by a majority vote at an election of the stockholders or landowners of the Spaceholder. Copies of the appropriate resolutions, minutes of the meetings or other official proceedings and pertinent supporting records shall be certified and furnished to the Contracting Officer and the Constructing Agency.

Officials Not to Benefit

41. (a) 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.

(b) No official of the Spaceholder shall receive any benefit that may arise by reason of this Spaceholder Contract other than as a landowner and in the same manner as other landowners.

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, the Contracting Officer or the Idaho Power Company 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 the Secretary of the Spaceholder, P.O. Box Y, Aberdeen, Idaho 83210, on behalf of the Spaceholder.

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: .....
Regional Director

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

AMERICAN FALLS RESERVOIR DISTRICT

By: .....
President

Attest:

.....
Secretary (SEAL)

SPACEHOLDER

By .....
President

Attest:

.....
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.

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 Twin Falls } ss.

On this 7th day of March, in the year 1976, before me, Bonnie Vecera, 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 affixed my official seal the day and year first above written.

Bonnie Vecera

Notary Public in and for the State of Idaho

Residing at: Twin Falls, Idaho

My commission expires: 7-18-77

(SEAL)

STATE OF IDAHO
COUNTY OF Twin Falls } ss.

On this 11th day of March, in the year 1976, before me, John A. Rosholt, a Notary Public, personally appeared Armin Schroeder and Elmer Isaak, 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.

John A. Rosholt

Notary Public in and for the State of Idaho

Residing at: Twin Falls, Idaho

My commission expires: 1979

(SEAL)

EXHIBIT A

WATER QUALITY FACILITIES AGREEMENT

Dated as of March , 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 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: .....
President

Attest:

.....
Secretary

(SEAL)

IDAHO POWER COMPANY

By: .....
President

Attest:

.....
Secretary

(SEAL)

APPROVED this .... day of ....., 1976

UNITED STATES SECRETARY OF THE INTERIOR

By: .....
Regional Director

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

STATE OF IDAHO)
COUNTY OF ..... } ss.

On this .... day of March, in the year 1976, before me, ..., 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.

.....

Notary Public in and for the State of Idaho

Residing at: ....., Idaho

My commission expires: .....

(SEAL)

STATE OF IDAHO)
COUNTY OF ..... } ss.

On this .... day of March, in the year 1976, before me, ..., a Notary Public, personally appeared ..... and ....., known to me to be the ..... and ..... 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.

.....

Notary Public in and for the State of Idaho

Residing at: ....., Idaho

My commission expires: .....

(SEAL)

Exhibit DDD

Dr-1040 (8-73)
Bureau of Reclamation
(ADP) [11-78]

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BILL FOR COLLECTION

FOR ADP USE
FAST SYSTEM

REG	VENDOR NO.
1-2	3-7

BILL NO. ▶	YR	TYPE	LOC	SERIAL NO.
	8	9-10	11-12	13-17
	3	07	10	83733

MAKE REMITTANCE PAYABLE TO: Bureau of Reclamation (Bureau or Office) DATE: Feb. 15, 1983

MAIL PAYMENT TO: Box 043 - 550 West Fort Street, Boise, Idaho 83724 (Address) DUE DATE: April 1, 1983

PAYER:

Idaho Power Company
Attn: C. E. Bissell - Vice President
P.O. Box 70
Boise, Idaho 83707

Subject to penalty of 1% per month if delinquent.

AMOUNT OF PAYMENT $ 18,022.45

C/D [redacted] 833603 2/28/83

DATE	DESCRIPTION	QUANTITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT	
	In accordance with Contract No. ILR-733 your proportionate share of Operation & Maintenance costs of Reserved Works is itemized below:					
	American Falls Reservoir					
	Credit Balance December 31, 1981		10,047	93		
	Collections for CY 1982		5,514	65		
	Nonoperating Credits - 1989		---			
	Total Credits Available for 1982 Operations				15,562	58
	Less:					
	Actual CY 1982 O&M Costs		16,328	75		
	Cost of Power Loss at Minidoka Dam 1981		---		15,328	75
	Surplus December 31, 1982				(756	17)
	Estimated O&M Costs CY 1983		17,061	73		
	Cost of Power Loss at Minidoka Dam 1982		---		17,061	73
	Total O&M Charges Due				17,827	90
	Construction Charges					
	Charges for CY 1983				194	55
	POSTED TO REPAYMENT LEDGER 2-15-83					
				AMOUNT DUE THIS BILL	$ 18,022	45

ACCOUNTING CLASSIFICATION

TRANS CODES T-C	CARD	ITEM OR	FUND	PROJ	AUTH NO.	MAIN ACCT	SUB ACCT	CL	YR	COST CENTER	OBJECT CODE	DESCRIPTION	MEMO AMOUNT
18-19	20	21-22	23-26	26-29	30-33	34-36	37-38	39	40	41-47	48-51	52-71	
02	A	01	UXO	1183									17,827.90
02	A	02	611	1183								Return Paid	194.55
02	A	03										Copy to Davis	
02	A	04											
02	A	05											
02	A	06											

AF011613

Exhibit EEE

[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 1

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(c) 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 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 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

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[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. VESSIA
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[illegible] 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	14-06-100-7446	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 Irrigation 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	2.8737
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 1

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

Exhibit FFF

[CONFORMED COPY]

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CONTRACT

between

THE UNITED STATES OF AMERICA

and

THE AMERICAN FALLS RESERVOIR DISTRICT

for

CONSTRUCTION AND OPERATION
AND MAINTENANCE OF
THE AMERICAN FALLS REPLACEMENT DAM PROGRAM

Dated as of March 31, 1976

Contract No. 14-06-100-9041

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Minidoka Project, Idaho-Wyoming

CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND THE AMERICAN FALLS RESERVOIR DISTRICT FOR CONSTRUCTION AND OPERATION AND MAINTENANCE OF THE AMERICAN FALLS REPLACEMENT DAM PROGRAM

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'age No.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Minidoka Project, Idaho-Wyoming

CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND THE AMERICAN FALLS RESERVOIR DISTRICT FOR CONSTRUCTION AND OPERATION AND MAINTENANCE OF THE AMERICAN FALLS REPLACEMENT DAM PROGRAM

THIS CONTRACT, made this 31st day of March, 1976, between 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 the Act of Congress approved December 28, 1973 (87 Stat. 904), and 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;"

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 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

5. 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

6. 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 total cost of the American Falls Replacement Dam Program; and

7. WHEREAS, this Government Contract is entered into for the purpose of authorizing the Constructing Agency to finance and provide for the construction of the American Falls Replacement Dam Program, to provide for the operation and maintenance of the Replacement Dam and Related Facilities,

and to make provision for the disposition of the storage space of those Waterusers which have not entered into Spaceholder Contracts, but only upon satisfaction of the conditions set forth herein;

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:

PART I

DEFINITIONS AND PURPOSE AND TERM

(Articles 8-9)

DEFINITIONS

8. The following terms, whenever used in this Government 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).

"Advisory Committee" shall mean the committee presently designated in the existing contracts between the United States and the Waterusers 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.

"Bonds" shall mean bonds and interim notes issued, and to be issued, by the Constructing Agency 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 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.

"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.

"Director of Design and Construction" shall mean the Director of Design and Construction, United States Department of the Interior, Bureau of Reclamation, Office of Design and Construction, Engineering and Research Center, Denver, Colorado.

"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 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.

"Federal Reclamation Laws" shall mean the Act of June 17, 1902 (32 Stat. 388), and all acts amendatory thereof or supplementary thereto including the Act of December 28, 1973.

"Government Contract" shall mean this contract entered into between the United States and the Constructing Agency, 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.

"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 hereto. 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 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.

"Quarter" shall mean the 3-calendar-month period commencing on the first day of January, April, July, and October of each year.

"Recreation and Fish and Wildlife Enhancement Facilities" shall mean the facilities to be provided pursuant to Section 6 of the Act of December 28, 1973, to enhance public recreation and fish and wildlife resources.

"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.

"Secretary" shall mean the Secretary of the Interior.

"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 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 Contract(s)" 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 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 hereof.

"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.

"Supplemental Falling Water Payments" shall mean the supplemental amounts agreed to be paid to the Constructing Agency by the Idaho Power Company pursuant to the 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 Bond indenture of the Constructing Agency.

"Water Control Structures" shall mean the facilities which control the storage and release of water through the Existing Dam or the Replacement Dam.

"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

9. (a) This Government Contract is entered into by the Secretary in accordance with the Act of December 28, 1973, to authorize the Constructing Agency to finance and provide for the construc-

tion of the American Falls Replacement Dam Program to replace the Existing Dam. The American Falls Replacement Dam Program shall in no way alter or change the present proportionate storage rights of the Waterusers, except as provided herein and as set forth in the Spaceholder Contracts.

(b) This Government Contract shall become effective upon its execution by the parties hereto and, except as provided in (c) of this Article, shall remain in effect until specifically terminated by mutual agreement.

(c) Either party may terminate this Government Contract after April 1, 1977, by the giving of notice to the other party, unless prior to the giving of such notice or within 60 days after the giving of such notice by the Contracting Officer, the Constructing Agency has contracted to sell Bonds to construct or equip the Replacement Dam. Within 7 days after contracting to sell Bonds, the Constructing Agency shall give notice of such contract execution to the Contracting Officer.

PART II

PRECONSTRUCTION AND CONSTRUCTION

(Articles 10-12)

Plans and Designs and Specifications

10. (a) The Constructing Agency shall be 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 4354.5 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 to 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.

(b) The Constructing Agency, in addition to the preparation of the plans for the American Falls Replacement Dam Program, shall be responsible for the preparation of the designs and specifications to provide for the accomplishment of the plans. As a condition precedent to the approval of the final designs and specifications for the construction of the Replacement Dam, the Constructing Agency shall have submitted to, and received written approval from the Contracting Officer of, a Plan of Operation and the Construction Work Schedule. The final designs and specifications for any facility to be constructed or acquired by the Constructing Agency as a part of the American Falls Replacement Dam Program shall not be issued by the Constructing Agency until the Contracting Officer has provided written approval thereof. The approval procedure for those final designs and specifications which have not heretofore been approved by the Contracting Officer shall be as follows:

(1) At least 45 days before the Constructing Agency's proposed dates for the issuance of final designs and specifications calling for bids, the Constructing Agency shall submit to the Contracting Officer the final designs and specifications for such facility.

(2) Not later than 30 days following each such submittal, the Contracting Officer shall notify the Constructing Agency of his approval or disapproval of such final designs and specifications.

(3) If disapproved, the items and the basis for such disapproval shall be specified as well as a list of the revisions necessary to secure approval. If the items disapproved or the method of revision cannot be resolved between the Contracting Officer and the Constructing Agency, the matter shall be submitted to the Director of Design and Construction and his determination shall be final and the final designs and specifications shall be changed to conform to any revisions determined necessary.

(c) The Constructing Agency's 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 Constructing Agency has consulted with the Advisory Committee regarding such operation and has received written notification from the Advisory Committee that such operation is acceptable to the Spaceholders entitled to an aggregate of not less than two-thirds of the active capacity of the Existing Dam.

(d) The United States shall be responsible for the accomplishment of the preparation of plans, designs, and specifications and for the accomplishment of construction of the Recreation and Fish and Wildlife Enhancement Facilities.

Right-of-Way and Permits

11. (a) The Constructing Agency shall submit descriptions of lands owned by the United States needed for the American Falls Replacement Dam Program. Such descriptions shall be submitted prior to the approval of the final designs and specifications for the Replacement Dam and the Contracting Officer shall provide to the Constructing Agency special use permits for lands required for the construction of the American Falls Replacement Dam Program as designated in the approved final designs and specifications. Notwithstanding such permits, title to all lands covered in such permits shall remain with the United States.

(b) The Contracting Officer will enter into an agreement with the State of Idaho relating to the use and operation and maintenance of the two-lane highway to be constructed on the crest of the Replacement Dam.

(c) The Constructing Agency shall secure title to all lands not owned by the United States or such interest therein as is required for the construction of the Replacement Dam, the Related Facilities, and the Water Quality Facilities. All of the right, title, and interest of the Constructing Agency in or to such lands shall be conveyed to the United States as provided in Article 14 hereof.

(d) The Constructing Agency shall secure all permits and licenses which are required in connection with the construction of the Replacement Dam, the Related Facilities, and the Water Quality Facilities.

(e) The Constructing Agency shall provide in the Falling Water Contract sections as follows:

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, and

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 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.

Construction of the American Falls Replacement Dam Program

12. (a) Upon receipt by the Constructing Agency of the written approval of the Contracting Officer of the final designs and specifications, the Constructing Agency may issue the final designs and specifications covered in such approval, award a contract, and initiate the construction or acquisition of the facility for which the final designs and specifications were issued. The American Falls Replacement Dam Program shall be constructed in accordance with the final approved designs and specifications, or any modifications thereof. The Constructing Agency shall supervise and inspect or cause the supervision and inspection of the construction of the American Falls Replacement Dam Program to assure construction in compliance with the approved final designs and specifications and the Construction Work Schedule or any approved modifications thereof. Modifications of the approved final designs and specifications may be made to accommodate actual field conditions but only after the proposed modification has been approved, in writing, by the Contracting Officer and the Constructing Agency.

(b) Prior to the commencement of construction of the Replacement Dam, any proposed revision in the Construction Work Schedule shall be submitted to the Contracting Officer for approval. In addition a detailed quarterly Construction Work Schedule shall be submitted to the Contracting Officer covering the period from the initiation of construction through the then current Quarter or remaining portion

thereof. Thereafter, a detailed quarterly Construction Work Schedule shall be submitted to the Contracting Officer not less than 15 days prior to the beginning of each subsequent Quarter until the construction is completed. The Contracting Officer shall be advised in advance of changes to a detailed quarterly Construction Work Schedule, in order to permit the coordination of the Contracting Officer activities during construction. The detailed quarterly Construction Work Schedules shall be consistent with the approved Construction Work Schedule and the approved Plan of Operation.

(c) During construction, the Constructing Agency shall prepare and furnish to the Contracting Officer, at such times as he shall indicate but not more often than once each month, written reports fully describing the progress of the construction of the American Falls Replacement Dam Program to the end of the preceding month or other designated period, as well as copies of construction quality control records for the same period of time.

(d) The Contracting Officer, during the construction of the American Falls Replacement Dam Program, shall have the right to review the construction in progress and to review reports of construction and testing to assure compliance with the approved final designs and specifications or any modifications thereof. The Contracting Officer shall direct his findings concerning construction to the Constructing Agency and to the authorized Constructing Agency representative designated as provided in Section 6.1 of the Falling Water Contract and any construction deficiency shall be corrected by the Constructing Agency to be consistent with the approved final designs and specifications or any modifications thereof. Disputes concerning a question of fact in regard to construction in accordance with the approved final designs and specifications or any modification thereof, and not resolved by agreement between the Contracting Officer and the Constructing Agency shall be decided by the Director of Design and Construction who shall provide his decision promptly in writing to the Constructing Agency. The decision shall be deemed final and conclusive and the Constructing Agency shall construct or reconstruct the facilities in conformity therewith.

PART III
OPERATION AND MAINTENANCE
(Articles 13-16)

Operation During Construction

13. (a) 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.

(b) 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.

(c) 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 Water Control Structures of the Replacement Dam.

Transfer of the Replacement Dam, the Related Facilities, and the Water Quality Facilities to the United States

14. (a) Upon the determination, as provided in (b) of this Article, of substantial completion of construction of the Replacement Dam, the Related Facilities, and the Water Quality Facilities, the

thereto shall be conveyed by the Constructing Agency to the United States by a document or documents satisfactory to the Contracting Officer. Such title shall remain in the United States until otherwise provided by Congress.

(b) As a condition precedent to the transfer of title of the Replacement Dam, a joint transfer review shall be made by representatives of the parties hereto. Representatives of the State of Idaho Transportation Department, Division of Highways, may participate in the transfer review of the two-lane highway on the crest of the Replacement Dam. The transfer review shall be in two parts; the initial transfer review at some appropriate time as mutually determined prior to the substantial completion of construction, and a final transfer review. A transfer review memorandum shall be prepared by the Contracting Officer for both the initial and final transfer reviews, indicating the general condition of the Replacement Dam to be transferred, deficiencies in construction (including incompleted construction) from that contemplated by the approved final designs and specifications and any approved modifications thereof, and action to be taken by the Constructing Agency to correct such deficiencies. Following the final transfer review and acceptance of the final transfer review memorandum by both parties, the Replacement Dam shall be deemed to be substantially completed. Notwithstanding such determination, the Constructing Agency shall be obligated to correct the construction deficiencies as specified in the final transfer review memorandum. A similar procedure shall be followed for the Related Facilities and the Water Quality Facilities.

(c) The following documents or copies thereof and equipment shall be provided by the Constructing Agency:

(1) Construction documents:

(i) As-built drawings;

(ii) Specifications and contract documents, i.e., abstracts, change orders, extra work orders and findings of fact;

(iii) Field survey notebooks, including location and elevation of permanent benchmarks, settlement points, and other horizontal and vertical control and movement points;

(iv) Geologic and soils data files;

(v) Instrumentation records;

(vi) Concrete design and mix control data;

(vii) Foundation treatment records;

(viii) Earth materials testing and construction control records.

(2) Equipment:

(i) Spare parts, tools, and supplies.

(3) Operating documents:

(i) Manufacturer's drawings, instruction manuals, parts list, and warranties;

(ii) Designers' operating criteria and manuals;

(iii) Acceptance test data and performance rating curves;

(iv) Technical records of designs and construction.

(4) Real estate documents:

(i) Land purchase contracts;

(ii) Deeds, easements, and evidence of title of all lands acquired by the Constructing Agency for the Replacement Dam and the Related Facilities;

(iii) Relocation agreements;

(iv) Lease agreements, licenses and permits;

(v) Working files, including negotiation reports, sufficient to clarify intent of acquisition documents and engineering drawings for all acquisitions.

(d) Upon acceptance of all the final transfer review memoranda and the correction of the construction deficiencies therein specified and the submission of the documents and equipment specified in (c) of this Article, the Secretary shall give notice to the Constructing Agency, the Trustee, and the Idaho Power Company that construction of the Replacement Dam, the Related Facilities, and the Water Quality Facilities has been completed.

Operation and Maintenance of the Replacement Dam, the Related Facilities, and the Water Quality Facilities

15. (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). The Constructing Agency is responsible for the operation and maintenance of the Water Quality Facilities and has entered into the Water Quality Facilities Agreement to provide for such operation and maintenance, which agreement is acceptable to the Secretary. The Water Quality Facilities Agreement may not be amended, supplemented, terminated, or assigned without the approval of the Secretary.

(b) 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 Spaceholders as a part of the operation and maintenance charges as provided in (c) of this Article.

(c) Commencing with the year that the first Spaceholder Bond Payments are due under the Spaceholder Contracts the operation and maintenance costs of the Existing Dam and the Replacement Dam and the Related Facilities will be returned to the United States in the manner provided in the Spaceholder Contracts.

Operating Criteria

16. 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.

PART IV

DELIVERY OF WATER AND CONTRACT WITH THE IDAHO POWER COMPANY FOR FALLING WATER

(Articles 17-18)

Delivery of Water

17. (a) The delivery of water pursuant to this Government Contract is contingent upon the execution of a Spaceholder Contract and the continued fulfillment of the obligations thereunder. The Constructing Agency and the United States have executed Spaceholder Contracts with the Waterusers listed on *Exhibit A*, in substantially the form attached as *Exhibit C*. Spaceholder Contracts have not

been executed with the Waterusers listed on *Exhibit B*. It is the intent of the United States to enter into a Spaceholder Contract on behalf of the Fort Hall Indian Reservation and if such Spaceholder Contract has not been executed at the time of execution of this Government Contract the Fort Hall Indian Reservation shall be considered to be a Spaceholder.

(b) The Contracting Officer shall give written notice to each Non-Participating Wateruser: (i) within 30 days after the execution of this Government Contract by the Contracting Officer and (ii) within 30 days after the Constructing Agency has contracted to sell any of the Bonds that, inasmuch as the delivery of water pursuant to this Government Contract is contingent upon the execution of a Spaceholder Contract and the continued fulfillment of the obligations thereunder, beginning on April 2 of the year in which the first Spaceholder Payments are due under the Spaceholder Contracts the delivery of water accruing to the space of Non-Participating Waterusers which have not prior to said April 2 executed a Spaceholder Contract shall be terminated subject to the following provisions, and such water shall be thereafter delivered by the Contracting Officer only in accordance with the following provisions:

(1) *Year in Which First Spaceholder Payments are Due.* The Contracting Officer shall deliver such water in the year that the first Spaceholder Payments are due under the Spaceholder Contracts to those Non-Participating Waterusers which (i) prior to the execution of this Government Contract, called and held an election on the proposition of the execution of a Spaceholder Contract and which election failed, and (ii) entered into a water rental contract with the Contracting Officer for the rental of such water and paid to the appropriate entities on or before April 1 of the year in which the first Spaceholder Payments are due under the Spaceholder Contracts, an amount at least equal to the Spaceholder Payments which would have been due on such April 1 had such Non-Participating Wateruser executed a Spaceholder Contract. The water in such year accruing to the space of all other Non-Participating Waterusers shall be made available by the Contracting Officer in accordance with the provisions of Article 17(d) hereof. The Contracting Officer shall give written notice, by December 31 of the year in which the first Spaceholder Payments are due: (i) to each Non-Participating Wateruser which received rental water in such year, that if such Non-Participating Wateruser does not execute a Spaceholder Contract on or before the next April 1, the water accruing to the space of such Non-Participating Wateruser in the year in which the second Spaceholder Payments are due shall, pursuant to the provisions of Section 3 of the Act of December 28, 1973, be made available in such year by the Contracting Officer in accordance with the provisions of Article 17(d) hereof, and (ii) to all other Non-Participating Waterusers, that if such Non-Participating Wateruser does not execute a Spaceholder Contract on or before the next April 1, and make the payments contemplated in Article 17(b)(2)(ii) hereof, the space of such Non-Participating Wateruser shall, pursuant to the provisions of Section 3 of the Act of December 28, 1973, thereafter be made available by the Contracting Officer in accordance with the provisions of Article 17(e) hereof, and the use of such space by the Non-Participating Wateruser shall be terminated.

(2) *Year in Which Second Spaceholder Payments are Due.* The Contracting Officer shall deliver such water in the year that the second Spaceholder Payments are due under the Spaceholder Contracts to those Non-Participating Waterusers which execute a Spaceholder Contract after April 1 of the year in which the first Spaceholder Payments are due under the Spaceholder Contracts but on or before April 1 of the year in which the second Spaceholder Payments are due and which:

(i) Received rental water in the year in which the first Spaceholder Payments were due, pursuant to Article 17(b)(1) hereof; or

(ii) Make the applicable Spaceholder Payments, interest, and penalties which would have been due under Article 29(c) of a Spaceholder Contract had the Non-Participating Wateruser executed a Spaceholder Contract and defaulted on the Spaceholder Payments becoming due and payable thereunder.

The water in such year accruing to the space of all other Non-Participating Waterusers shall be made available by the Contracting Officer in accordance with the provisions of the notice contemplated to be given pursuant to Article 17(b)(1) hereof. The Contracting Officer shall give written notice, by December 31 of the year in which the second Spaceholder Payments are due, to each Non-Participating Wateruser which received water under a water rental contract in the year in which the first Spaceholder Payments are due pursuant to Article 17(b)(1) hereof, that if such Non-Participating Wateruser does not execute a Spaceholder Contract by the next April 1, and make the payments contemplated in Article 17(b)(3) hereof, the space of such Non-Participating Wateruser shall, pursuant to Section 3 of the Act of December 28, 1973, thereafter be made available by the Contracting Officer in accordance with the provisions of Article 17(e) hereof, and the use of such space by the Non-Participating Wateruser shall be terminated.

(3) *Year in Which the Third Spaceholder Payments are Due.* The Contracting Officer shall deliver such water in the year that the third Spaceholder Payments are due under the Spaceholder Contracts to those Non-Participating Waterusers which received rental water in the year in which the first Spaceholder Payments were due, pursuant to Article 17(b)(1) hereof, and which executed a Spaceholder Contract after April 1 of the year in which the second Spaceholder Payments are due under the Spaceholder Contracts but on or before April 1 of the year in which the third Spaceholder Payments are due, and which make the applicable Spaceholder Payments, interest and penalties which would have been due under Article 29(c) of a Spaceholder Contract had the Non-Participating Wateruser executed a Spaceholder Contract and defaulted on the Spaceholder Payments becoming due and payable thereunder. The water in such year accruing to the space of all other Non-Participating Waterusers shall be made available by the Contracting Officer in accordance with the provisions of the notice contemplated to be given pursuant to Article 17(b)(2) hereof.

(4) Each notice given hereunder shall state that whenever any Non-Participating Wateruser shall execute a Spaceholder Contract, such Non-Participating Wateruser shall, for all purposes of this Government Contract, be deemed to be a Spaceholder. All notices commencing with the notice given 30 days after the Constructing Agency has contracted to sell the Bonds shall state the years in which the first, second, and third Spaceholder Payments are due.

(5) Within 7 days after April 1 of each of the years in which the first, second, and third Spaceholder Payments are due under the Spaceholder Contracts the Contracting Officer shall give notice to the Constructing Agency, the Idaho Power Company, the Trustee, and each Non-Participating Wateruser of the disposal by the Contracting Officer of water accruing to the space of Non-Participating Waterusers.

(6) The Contracting Officer shall not bill Non-Participating Waterusers or Spaceholders for the operation and maintenance costs of the Replacement Dam and the Related 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 herein.

(c) Upon a default by a Spaceholder in the payment of all or any part of a Spaceholder Replacement Dam Operation and Maintenance Payment, the Contracting Officer shall give notice of such default to the Constructing Agency, the Idaho Power Company, the Defaulted Spaceholder, and the Trustee within 7 days after such default has occurred. Upon (i) the giving of notice of a default by a Spaceholder in payment of all or any part of a Spaceholder Replacement Dam Operation and Maintenance Payment, or (ii) receipt of notice from the Constructing Agency, or the Trustee on behalf of the Constructing Agency, of a default by a Spaceholder in the payment of all or any part of a Spaceholder Bond Payment or a Spaceholder Water Quality Facilities Operation and Maintenance Payment, the Contracting Officer shall withhold from a Defaulted Spaceholder the delivery of water accruing to the space of such Defaulted Spaceholder in 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 Article 29(c) of the Spaceholder Contracts; *Provided however,* That in the event Bonds in excess of the initial authorization must be issued to complete the American Falls Replacement Dam Program as provided in Article 27 of the Spaceholder Contracts, the Contracting Officer shall not be obligated to withhold the delivery of water to a Spaceholder which has not executed a supplement to its Spaceholder Contract until it is judicially determined that the Spaceholder is obligated to pay its proportionate share of the total cost of the American Falls Replacement Dam Program as contemplated in Article 27 of the Spaceholder Contracts.

(d) In each year prior to the termination of a Spaceholder Contract or the permanent disposition of the water accruing to the space of a Non-Participating Wateruser, the Contracting Officer shall make the water accruing to the space of a Defaulted Spaceholder or a Non-Participating Wateruser available for use in such year: 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 notwithstanding any other provisions of this Government Contract, of the Spaceholder Contracts, or of the Existing Spaceholder Contracts. Charges for such use shall be at least sufficient in the case of a Defaulted Spaceholder to pay the Spaceholder Payments or any portion thereof, including interest and penalties, due on behalf of a Defaulted Spaceholder, or in the case of a Non-Participating Wateruser the Spaceholder Payments as well as any applicable payments for interest and penalties all of which would have been due and payable had the Non-Participating Wateruser executed a Spaceholder Contract. The payment for the use of such space shall be made by or to the Contracting Officer who shall reimburse the Idaho Power Company for Supplemental Falling Water Payments made to the Trustee, including interest thereon, under the Falling Water Contract. Any moneys received by the Contracting Officer in excess of those required to meet (i) all or any part of the Spaceholder Payments, including interest and penalties, which are in default and which are due on behalf of a Defaulted Spaceholder, (ii) applicable Spaceholder Payments, interest and penalties which would have been due and payable had the Non-Participating Wateruser executed a Spaceholder Contract, and (iii) 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. If the Contracting Officer does not arrange for the use of such space as provided herein and the reimbursement to the Idaho Power Company for the Supplemental Falling Water Payments on or before May 15 of any such year, such space will be made available to the Idaho Power Company for power generation subject to the provisions of Article 18(b) hereof.

(e) If a Spaceholder's Contract is terminated as provided therein, or if the use of space by a Non-Participating Wateruser shall be terminated as provided in Article 17(b) hereof, the Contracting Officer shall continue to arrange for the use of such space in each year under the procedures described in (d) of this Article until such time as a Spaceholder Contract satisfactory to the Constructing Agency and the Contracting Officer is executed providing for the disposition of such space. Such Spaceholder shall require, as a minimum, the assumption of the unsatisfied obligations and the conditions of the contract of the Defaulted Spaceholder or in the case of the Non-Participating Wateruser the equivalent thereof and any excess shall be applied by the Contracting Officer toward future operation and maintenance costs of the Spaceholders on the Replacement Dam and the Related Facilities. So long as any of the Bonds are outstanding and unpaid, the Contracting Officer and the Constructing Agency shall not enter into one or more permanent contracts with the Idaho Power Company which would provide for an amount of active storage capacity which together with the amount of active storage capacity presently owned by the Idaho Power Company under its Spaceholder Contract (2.6471 percent) would exceed 8 percent of the active storage capacity of the Replacement Dam.

(f) The provisions of Article 17 hereof shall not apply to the space of the Fort Hall Indian Reservation. The Spaceholder Replacement Dam Operation and Maintenance Payments and the Spaceholder

Water Quality Facilities Operation and Maintenance Payments assignable to the Fort Hall Indian Reservation shall be returned as provided in its Spaceholder Contract.

(g) Although the parties hereto do not believe that any grounds exist for the awarding of damages to a Non-Participating Wateruser, if as a result of the application of this Article 17, a final determination of a court of competent jurisdiction holds that a Non-Participating Wateruser, whose use of space is permanently terminated, is nevertheless entitled to damages from the United States for the loss of such space, money in the construction fund (as defined in the Falling Water Contract), not necessary to pay other costs of construction of the American Falls Replacement Dam Program shall be used for such purpose, otherwise such amount shall be reimbursed to the United States as part of the Spaceholder Replacement Dam Operation and Maintenance Payments. In all other instances, to the extent related to the cost of the American Falls Replacement Dam Program, where a final determination of a court of competent jurisdiction holds that a Non-Participating Wateruser is entitled to damages from the United States as a result of the application of this Article 17, such amount shall be reimbursed to the United States as part of the Spaceholder Replacement Dam Operation and Maintenance Payments.

FALLING WATER CONTRACT WITH THE IDAHO POWER COMPANY

18. (a) The Idaho Power Company has acknowledged acceptance of all of the provisions, terms, and conditions of the License and the Constructing Agency and the Idaho Power Company have entered into the Falling Water Contract, approved by the Secretary and attached as *Exhibit D*, to utilize for power generation at the Powerplant the water released from the Replacement Dam in return for the Falling Water Payments, which utilization is and 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, except for temporary increases resulting from the securing of water accruing to the storage space of a Defaulted Spaceholder or a Non-Participating Wateruser as provided for in (b) of this Article or arising from unusually wet or dry weather in the service area of the Replacement Dam. So long as the Idaho Power Company is not in default under the provisions of the Falling Water Contract, during the term of its License or any continuation or renewal thereof, the Idaho Power Company shall be entitled, subject to the limitations of this Article and Article 16 hereof and in accordance with the provisions of its License or any continuation or renewal thereof, to utilize for power generation at the Powerplant the water released from the Replacement Dam: *Provided*, That the approval of the Falling Water Contract by the Secretary does not preclude the Secretary from making any recommendations or comments in respect to the License or any continuation or renewal thereof.

(b) Subject to the limitations of this Article and Article 16 hereof, the Idaho Power Company shall also 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 hereof: *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.

(c) The Contracting Officer, upon notice from the Constructing Agency or the Trustee that the Idaho Power Company is in default under the provisions of the Falling Water Contract, shall suspend any and all rights of the Idaho Power Company to the use of the water released from the Replacement Dam and during such suspension shall operate the Replacement Dam to bypass water around the Powerplant. The Contracting Officer, acting with the consent of either the Constructing Agency or the Trustee, may without further notice to the Idaho Power Company grant any or all of the suspended rights to any person or entity for the duration of the suspension.

(d) 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 provided in the Water Quality Facility 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.

(e) 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.

(f) 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.

PART V

RETURN OF COSTS

(Articles 19-20)

Return of Unpaid Costs of the Existing Dam

19. 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 Contracts provide for the payment to the United States of an annual amount to return this sum in 40 years. 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.

PAYMENT OF COSTS OF THE UNITED STATES

20. (a) The United States shall review the Construction Work Schedule and the detailed quarterly Construction Work Schedules, inspect construction, and review quality control. Costs incurred by the United States for the foregoing work shall embrace all expenditures of whatsoever kind in relation to the function for which the charge is made including, but without limitation by reason of this enumeration, salaries, travel, per diem, materials and equipment, and engineering.

(b) Following the approval of the final designs and specifications for the construction of the Replacement Dam and upon notice from the Contracting Officer, the Constructing Agency shall advance the amount indicated in such notice for the Quarter or portion thereof for the estimated costs to be incurred by the United States for the work described in (a) of this Article. The Constructing Agency shall thereafter advance to the United States not later than the first day of each succeeding Quarter, the estimated cost of such additional work to be incurred for said Quarter. The Contracting Officer shall furnish the estimated cost of such work to the Constructing Agency in writing not later than 30 days prior to the beginning of each Quarter. Whenever, in the opinion of the Contracting Officer, funds advanced will be inadequate to cover the estimated cost of the remaining work to be accomplished in any Quarter, he may give a supplemental notice stating therein the amount required for the remainder of the Quarter and the Constructing Agency shall advance such additional amount on or before the date specified in the supplemental notice. Any unencumbered funds at the end of each Quarter shall be credited against the estimated cost for the then succeeding Quarter. Upon notice by the Contracting Officer pursuant to Article 14(d) hereof that construction of the Replacement Dam, the Related Facilities, and the Water Quality Facilities is completed, any unexpended or unobligated funds previously advanced shall be returned by the Contracting Officer to the Constructing Agency. The cost for such work is estimated at $150,000.

PART VI

GENERAL PROVISIONS

(Articles 21-35)

BOOKS, RECORDS, AND REPORTS

21. The Constructing Agency shall establish and maintain accounts and other books and records pertaining to the American Falls Replacement Dam Program as the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as he may require. Subject 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 Government Contract.

RULES, REGULATIONS, AND DETERMINATIONS

22. (a) 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 Spaceholder Bond Payments or the Spaceholder Water Quality Facilities Operation and Maintenance Payments due to the Constructing Agency from the Spaceholders under the Spaceholder Contracts. The Constructing Agency shall observe such rules and regulations.

(b) Where the terms of this Government Contract provide for action to be based upon the opinion or determination of either party hereto, 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 questions any factual determinations made by the Contracting Officer, except for those made under the provisions of Article 12(d) hereof, the findings as to the facts shall be made by the Secretary only after consultation with the Constructing Agency and shall be conclusive upon the parties.

Water and Air Pollution

23. (a) During construction of the American Falls Replacement Dam Program, the Constructing Agency 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, ground water, 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.

(b) 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 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

24. No liability shall accrue against the United States or any of its officers, agents, or employees 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) hereof, whether or not attributable to negligence of officers, agents, or employees of the United States or the Constructing Agency, or other causes of whatsoever kind; nor shall the Constructing Agency's obligations to the United States under this Government Contract be reduced by reason of such shortages or interruptions.

Constructing Agency to Hold the United States Harmless

25. The Constructing Agency shall indemnify and hold harmless the United States, its officers, agents, or employees on account of all damages or claims for damages by whomsoever made and of any nature whatsoever arising out of or in any manner connected with the construction of the Replacement Dam, the Related Facilities, or the Water Quality Facilities. This obligation includes, but is not limited to, any and all damages, including attorney costs, from claims of construction contractors, or subcontractors, of contractors or of firms furnishing materials, equipment supplies, or services, from all claims of the State of Idaho or of the Idaho Power Company; but does not include any claims of Non-Participating Waterusers for damages arising from the execution of this Government Contract.

Changes in Constructing Agency's Organization

26. While this Government Contract is in effect, no change shall be made in the Constructing Agency's organization by exclusion of lands, dissolution, consolidation or merger, except upon the Contracting Officer's written consent.

ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

27. The provisions of this Government Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Government Contract or any part thereof or interest therein by the Constructing Agency 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 assignments to the Trustee of the Falling Water Payments and the Supplemental Falling Water Payments pursuant to the Falling Water Contract and the Spaceholder Bond Payments pursuant to the Spaceholder Contracts shall not be considered such an assignment or transfer.

EQUAL OPPORTUNITY

28. (a) The Constructing Agency hereby agrees to incorporate, or cause to be incorporated, into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is paid for, in whole or in part, with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following Equal Opportunity clause:

"EQUAL OPPORTUNITY"

"During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the contractor may be declared

ineligible for further Government contracts or Federally assisted contruction contracts in accordance with procedures authorized in said amended Executive Order and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The contractor will include this Equal Opportunity clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Contracting Officer, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

(b) The Constructing Agency further agrees that it will be bound by the above Equal Opportunity clause with respect to its own employment practices when it participates in Federally assisted construction work.

(c) The Constructing Agency agrees that it will assist and cooperate actively with the Contracting Officer and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Contracting Officer and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the Contracting Officer in the discharge of his primary responsibilty for securing compliance.

(d) The Constructing Agency further agrees that it will refrain from entering into any contract or contract modification subject to said amended Executive Order with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to said amended Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the Contracting Officer or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order. In addition, the Constructing Agency agrees that if it fails or refuses to comply with these undertakings the Contracting Officer may refer the case to the Department of Justice for appropriate legal proceedings.

Title VI, Civil Rights Act of 1964

29. (a) The Constructing Agency 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 Constructing Agency receives financial assistance from the United States and hereby gives assurance that it will immediately take any measures to effectuate this Government Contract.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Constructing Agency by the United States, this assurance obligates the Constructing Agency, 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 Constructing Agency for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Constructing Agency 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 Constructing Agency 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 Constructing Agency 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 Constructing Agency, its successors, transferees, and assignees.

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Confirmation of Contract

30. The Constructing Agency shall have caused the execution of this Government Contract and the issuance of the Bonds to be approved, to the extent required under Title 43, Idaho Code, as amended, at an election or elections held for such purpose. The Constructing Agency shall, after the holding of such election or elections, have caused appropriate confirmation proceedings to be taken in the proper court of the State of Idaho pursuant to the provisions of Section 43-2204, Idaho Code, as amended, with respect to the execution of this Government Contract and the issuance of the Bonds. The Constructing Agency shall furnish to the Contracting Officer a certified copy of the confirmation decree and of all pertinent supporting records.

Officials Not to Benefit

31. (a) No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Government Contract or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Government Contract if made with a corporation or company for its general benefit.

(b) No official of the Constructing Agency shall receive any benefit that may arise by reason of this Government Contract other than as a landowner and in the same manner as other landowners.

Contingent on Appropriation or Allotment of Funds

Attest

32. 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 Constructing Agency from any obligations under this Government Contract. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

Notices

33. Any notice, demand, or request authorized or required by this Government 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 Government 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 Government 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.

CONSTRUCTING AGENCY SPACEHOLDER CONTRACT

34. It is recognized that the Constructing Agency is a Spaceholder, and it is agreed and understood between the parties hereto that the Constructing Agency's rights, duties, and obligations as a Spaceholder are governed exclusively by its Spaceholder Contract and not by the terms and conditions of this Government Contract.

SEVERABILITY

35. In the event any provision of this Government 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.

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, Idaho 83724

AMERICAN FALLS RESERVOIR DISTRICT

By: /s/ JOHN M. BARKER
President

Attest:

/s/ DIANNE BRIDEGUM (SEAL)
Secretary

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, 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)

SPACEHOLDERS
HOLDINGS OF SPACE IN AMERICAN FALLS RESERVOIR

Percent to Distribute Annual Replacement Dam

Percent of Active Capacity

Date of Contract

Water User

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SPACEHOLDERS
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							
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	14-06-100-7446	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 Irrigation 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 A

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 B

Exhibit GGG

United States Department of the Interior

BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
FEDERAL BUILDING & U.S. COURTHOUSE
BOX 043-550 WEST FORT STREET
BOISE, IDAHO 83724

IN REPLY
REFER TO: 600
832.

AUG - 2 1977

AUG 5 1977
CC TO:
1100 CCR 8/5
110 CH 8/5
460 RH 8/8
405 Las 8/10
600 DMT 8/16

Memorandum

To: Regional Director

From: Regional Supervisor of Power

Subject: June 15, 1923, Contract Between the Bureau and the Idaho Power Company Regarding American Falls Dam

During one of our discussions last May, you asked for my opinion regarding the necessity for amending the subject contract. This questions was raised because a suggestion for review and possible amendment of the 1923 contract had come up during the negotiation of contracts providing for the construction of the Replacement Dam at American Falls and for sale of falling water to the IPCo. Basically three new contract forms were executed March 31, 1976:

(1) the contract between the United States and the Constructing Agency, called the Government Contract,

(2) the Spaceholder Contract(s) among the United States, the Constructing Agency and the Spaceholder(s) for storage in the Replacement Dam, and

(3) the Falling Water Contract between the Constructing Agency and the Idaho Power Company, approved by the Regional Director for the Department of the Interior.

The 1923 contract bears the symbol and number IIr-733, and in the recent contracts regarding the American Falls Dam Replacement program it has been defined as the "Existing Spaceholder Contract." The IPCo "Spaceholder Contract" dated March 31, 1976, has been designated Contract No. IIr-733S. The 1976 IPCo Spaceholder Contract provides in Article 19(a) that nothing in it shall alter or change the present proportionate storage rights of the Spaceholder (IPCo), and further that the 1976 Spaceholder Contract and the Dam Replacement program authorized by the Act of December 28, 1973, constitute a reaffirmation by the United States of the rights of IPCo under the 1923 contract except as modified by the 1976 Spaceholder

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

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Contract. The Article also recognizes that the 1923 contract contains some provisions that are no longer applicable and indicates the intention of the United States and the Company to subsequently meet and review the 1923 contract for possible revision.

The fact that the 1923 contract has been in existence for 54 years without amendment is pretty good evidence that either there is no pressing need to amend it or no mutual agreement could be reached for a permanent change. There are many provisions in the 1923 contract that are no longer applicable. Some of these merely deal with actions that have been completed, such as the commitments to sell property and water rights to the United States and provisions for payment therefor. There are, however, provisions in the 1923 contract that would be in conflict with the present new arrangements for the Replacement Dam and the new IPCo powerplant.

The 1923 contract was written in contemplation that there would be a Company powerplant and a Government powerplant at American Falls Dam. To deal with this kind of situation contract provisions were written to state priorities in the rights to use water for power generation. The United States has never constructed a powerplant to use its power rights, so its only remaining interest has been to store and use its water for irrigation. With the Replacement Dam in operation the United States will control the storage and releases of water from the dam for the purposes covered in the Authorizing Act and the Company will utilize the released water for power generation.

A difference of opinions possibly could arise over the rights of the Company to use American Falls Reservoir capacity to regulate releases of water for peaking its power production. Article 14 of the 1923 contract provides for Company use of 5,000 acre-feet of otherwise unused capacity of American Falls Reservoir for such operation. But if this were to "impair the efficiency of the project to serve other purposes of the Minidoka Project" (e.g., cause inefficient operation of Minidoka Dam and Powerplant or destroy fishery and recreation below the American Falls Dam), then peaking use of the reservoir capacity would appear to be in conflict with the Authorizing Act (Section 4).

There is also a provision in Article 21 of the 1923 contract which requires that the winter releases from American Falls for use by the Company below Milner Dam are to be made in such a way that the required flow can be maintained at Shoshone Falls by the utilization of not more than 3,000 acre-feet of storage capacity in Lake Walcott. I am not aware of any problems that may have come up regarding this provision.

Article 15 of the 1923 contract requires the United States to provide penstocks through the dam and also to provide a "Division Dam" between the Company dam and the Government dam. Obviously, construction of the Replacement Dam and the new powerplant has eliminated any future requirement for the United States to provide these items.

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The Company has a primary storage right in the amount of 45,000 acre-feet of capacity in the American Falls Reservoir and a secondary right to 255,000 acre-feet of capacity. Generally speaking, the 255,000 acre-feet of capacity is usable in the period from November 1 until the reservoir first fills but there are other limitations too. Article 19 of the 1923 contract provides that the Company has the right to the first 300,000 acre-feet of water flowing into the reservoir after October 1 and actually storable therein, with the exception that precedence is given to the release through American Falls Dam of water to supply an amount of power not exceeding 10,000 kilowatts of peaking power to supply the power needs of the Minidoka Project and other Government uses. The water required to fill the 45,000 acre-feet of primary storage is a part of the 300,000 acre-feet. There have been differences of opinion between the Bureau and the Company regarding whether the Company has the right to claim the full 45,000 acre-feet of water in ayear when the American Falls Reservoir fails to fill. The Bureau has contended that the Company storage should be prorated. The Company has consistently denied this interpretation.

The Company would wish to retain the rights it has under the 1923 contract to have certain flows below the Milner Dam maintained by releases of water stored in the Company's 255,000 acre-feet of secondary storage capacity. Generally, these flows have been maintained over the years and it is not likely there would be conflicts regarding them. However, if a conflict of views should somehow arise there would be an interesting set of legal considerations for the reasons that (1) Section 2(a) of the Authorizing Act (and Article 19(a) of the 1976 Spaceholder Contract) provides that construction of the Replacement Dam "shall constitute reaffirmation of existing contract rights between the Secretary and Spaceholders except as otherwise provided in this Act," (2) Section 4 of the Authorizing Act provides that the contract for Falling Water "shall not impair the efficiency of the project to serve the other purposes of the Minidoka Project," and (3) Section 4.7 of the Falling Water Contract provides that "No liability shall accrue against the United States -- arising by reason of shortages in the quantity of water available through the Existing Dam or 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..." On the one hand, the Act reaffirms the IPCo right under the 1923 contract, and on the other hand the Act provides that the efficiency of the American Falls Replacement Dam to serve the other purposes of the Minidoka Project shall not be impaired.

The United States would not wish to be bound by the provisions of Article 19 that proport to limit the United States power marketing area to the "Minidoka Project and its proposed extension, 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 and American Falls, but not elsewhere in the old or new town of American Falls."

Although there are provisions of the 1923 contract which are no longer applicable most of them have not prevented operations under the contract since by their nature they no longer have effect. While an attempt could be made to meet the types of problems described above with contract amendments, it would be more practical and easier to solve such problems on a case-by-case basis when and if they arise without negotiating an amendment. This has been done on quite a few occasions in the past where it has been possible to meet circumstances not specifically provided for in the contract on an ad hoc basis for the benefit of irrigation water users with no amendment of the contract. My conclusion is that it is not necessary to undertake negotiations to amend the 1923 contract.

For your information there is enclosed a brief summary of the contents of the 1923 contract.

Merrill J. Martz

Enclosure

cc: Project Superintendent, Burley, Idaho
RO 150, 400, 700
(w/copy of enclosure to each)

AF017347

1923 CONTRACT BETWEEN THE UNITED STATES AND THE IDAHO POWER COMPANY

Brief Summary of Contents

The WHEREAS clauses, Articles 2 through 7, state that:

- the United States contemplates construction of a large reservoir at American Falls for reclamation of public lands including the North Side Pumping Division of the Minidoka Project.

- the Company furnishes electricity in Southern Idaho which is generated in hydroelectric plants which were then located at American Falls and at various points below.

- the water to be stored by the United States will interfere with certain power and water rights of the Company at American Falls.

- a portion of the proposed American Falls Dam and Reservoir would be located on land owned by the Company and the construction of the dam will also interfere with generating stations and other property of the Company.

- the Company has at American Falls water filings prior to the filings of the United States covering the amount of water reserved to the Company under this contract.

- the proposed North Side Pumping Division of the Minidoka Project will require a large powerplant for the required pumping power.

Article 9. PROPERTY TO BE CONVEYED TO THE UNITED STATES

Article 9 provides that the Company will sell:

(a) certain property provided that the Company shall have the right to store water upon that part of the property described in this Article insofar as such reservation does not conflict with any of the rights granted to the United States,

(b) two powerplants known as the Island Powerplant and the West Side Plant,

(c) the west portion of the present dam and spillway at American Falls up to and including the intake to the Island Plant reserving to the Company the rights it now has to use, maintain, and operate the present dam in connection with the operation of its East Side Plant, until such time as the United States has constructed a division dam in accordance with the provisions of Article 15.

(d) all the Company's water rights, appropriations, water filings and permits at American Falls to be used in connection with the Company's powerplants at American Falls except the primary and tertiary rights reserved to the Company. In this contract the water rights transferred to the United States for power purposes shall be considered as impressed with a right in the United States to change the use from power to irrigation or to store the same; but the water rights and rights which the Company reserved out of its existing appropriations and rights 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 the Snake River at whatever points and in whatever counties insofar as the rights granted to the United States to store and use water may interfere with the rights of the Company at any lower points on the Snake River.

Article 10. COMPANY'S PRIMARY SUMMER POWER RIGHT

Under this article, the Company reserves 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 1 increasing uniformly to 2,500 second-feet on May 1 and continuing at that amount until September 15 inclusive then decreasing uniformly to 100 second-feet on October 31. The Company also has a primary right to use at any time any water brought to American Falls by it from beyond the Snake River watershed, or any stored water acquired by the Company from storage capacity hereafter constructed above American Falls, provided that the Company's right to store water in 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 American Falls Reservoir, but in addition to the storage capacity then available in Jackson Lake Reservoir and Lake Walcott.

Article 11. GOVERNMENT'S SUMMER POWER RIGHT

Article 11 describes the Government's summer power right at American Falls. This right is described as being secondary to the primary power right of the Company and is that amount of water which will generate continuously in the Government's American Falls Powerplant 6,700 kW beginning on April 1 increasing uniformly to 25,000 kW on May 1 and to 30,000 kW on June 1 continuing at that amount to August 15 inclusive then decreasing use to 25,000 kW on September 15 and to 5,500 kW on October 31 and none from November 1 through March 31 inclusive, except in the connection with the 10,000 kW of winter power authorized in Articles 24 and 19.

Article 12. COMPANY'S ADDITIONAL SUMMER POWER RIGHT

The Company reserved the right to use for power all additional water released or wasted from the reservoir from April 1 to October 31 over and above the primary rights of the Company and the secondary rights of the United States. If after five years the Company failed to make provision to utilize this tertiary power right provided in this Article then the United States became entitled for a period of three years to develop and use any unused portion of the additional power right, thereafter either party could by making such provision become entitled to use any undeveloped portion of the tertiary power right.

Article 13. SUBSTITUTION OF ACRE-FEET FOR SECOND-FEET

Article 13 provides for generating daily peaking power but the daily amounts in acre-feet are not to exceed double the stated cfs.

Article 14. COMPANY'S SUMMER REGULATION OF 5,000 ACRE-FEET

Article 14 provides for Company use of 5,000 acre-feet of capacity otherwise unused in the American Falls Reservoir for the purpose of regulating its primary summer power right and any other water the Company brings in from beyond the Snake River watershed.

Article 15. OUTLET WORKS AND DIVISION DAM FOR COMPANY

Article 15 provides that the United States would construct penstock works sufficient for 6,000 second-feet delivery to the Company's East Side Plant. The Article also provides that the United States would construct and maintain a division dam between the westerly portion of the Company's American Falls Dam and the Government's proposed American Falls Dam for the purpose of directing water to the Company's East Side Plant.

Article 16. COMPANY'S PRIMARY STORAGE CAPACITY

Article 16 provides that the Company shall be entitled to a perpetual 45,000 acre-feet of storage capacity in the American Falls Reservoir.

Article 17. OPERATION AND MAINTENANCE CHARGES

Article 17 provides that the O&M charges to be paid by the Company for each acre-foot of secondary storage capacity described in Article 18 shall be 7/20 of the O&M charge for an acre-foot of primary storage capacity.

Article 18. COMPANY'S SECONDARY STORAGE CAPACITY

Article 18 grants to the Company for the purpose of regulating and controlling water the use of not to exceed 255,000 acre-feet of storage capacity in the reservoir in the period October 1 to June 10 when such capacity is not required or it is not being used for other purposes. The Company rights to the 255,000 acre-feet of capacity or to any water stored therein ends when the reservoir is first filled each season, and in any event the Company rights to such storage capacity and any water stored therein reduce to 60,000 acre-feet on April 1 and to zero on June 10.

Article 19. COMPANY'S RESERVED WATER RIGHT OF 300,000 ACRE-FEET

In addition to the Company's primary summer power right described in Article 10, the Company has the right for power development at American Falls and for limited power use below Milner to 300,000 acre-feet of water flowing into the reservoir after October 1 of any year which shall be the first 300,000 acre-feet flowing into the reservoir after October 1 and actually storable therein except that precedence shall be given to the release through the American Falls Dam to the amount, if any, required to supply the amount of power not exceeding 10,000 kW peak needed to supply the power demands and uses on the Minidoka Project and the camp and construction work at American Falls but not elsewhere. The United States has the right to store and use for irrigation purposes the water authorized to be used for generation of winter power not exceeding 10,000 kW. Article 23 provides that the United States shall secure at the Minidoka Powerplant as much of the 10,000 kW as it is reasonably practible to secure without releasing water which otherwise might be held for generation. The balance, if any, would be generated at American Falls. All of the 10,000 kW may be generated at American Falls when the Minidoka Plant is out of operation on account of enlargement improvement or repairs. Also, the United States has the right to store and use for irrigation the water authorized to be used for production of the 10,000 kW of winter power.

Article 20. COMPANY RIGHT TO PRIMARY STORAGE WATER

The water required to fill the 45,000 acre-feet of primary storage capacity allowed the Company shall be a part of the 300,000 acre-feet of water reserved to the Company under Article 19. The Company has the privilege of holding over after October 1 and until November 15 any water which it may have remaining in its own storage capacity of 45,000 acre-feet, but the right expires on November 15 to any amount held over on that date.

Article 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, any water imported by the Company from outside the Snake River watershed, and to such portion of the 255,000 acre-feet mentioned in Article 18 as is needed for power development at Shoshone Falls but not exceeding certain stated flows in second-feet at Shoshone Falls during the period October 1 to June 10. The releases are to be made in such a way that the flows at Shoshone Falls can be regulated by use of not more than 3,000 acre-feet of Lake Walcott capacity. The total flows at Shoshone Falls exclusive of releases from the Company's 45,000 acre-feet are:

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

Article 22. TWIN FALLS POWER SITE

Article 22 provides for measurement of the flows at Twin Falls instead of Shoshone Falls, in which case the flows in the above table are reduced by 100 cfs. Nothing in this contract waives the right of the United States to develop the Twin Falls power site or any other site, nor does it imply that a license or right or permit will be granted the Company.

Article 24. STORAGE RIGHTS OF THE UNITED STATES AND WINTER WASTES

The United States has the right to store all of the storable water at American Falls not specifically reserved to the Company. The Company has the right to use for power purposes at American Falls water released or wasted between November 1 and March 31 inclusive in excess of the amount 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 Bureau on a forecast basis and the United States agrees that such water that may be available for waste during the winter will be released in such a manner as to secure its reasonable availability for beneficial use for power development.

The remaining Articles 25 through 39 deal with payment, transfer of titles and rights, and with interim uses of storage during construction and otherwise are boilerplate articles. However, Article 30 reiterates that all power rights at American Falls except those granted to the United States herein shall be reserved to the Company.

Exhibit HHH

;From: Bowling, Jon
Sent: Wednesday, October 10, 2001 8:32 AM
To: Tucker, James
Subject: American Falls Historical Minimum flow Volumes

Jim, Attached is a slightly revised table for the American Falls minimum volume increases required to meet the flow rate schedule in the 1923 contract. The value for 2001 was wrong in the table I gave you.

Jon

American Falls fill date and cumulative volume by year.
Volume required to provide delivery rate as required by 1923 contract.

Date Filled	Volume Required
6/10/77	47,630
5/19/78	27,634
6/10/79	18,379
4/11/80	13,323
4/1/81	9,983
5/8/82	-
5/9/83	-
5/18/84	-
6/10/86	-
4/13/87	2,075
6/10/88	63,781
6/10/89	65,214
6/10/90	72,622
6/10/91	88,436
6/10/92	69,476
5/12/93	101,605
4/4/94	4,897
6/10/95	34,094
6/10/96	5,098
6/3/97	2,158
5/13/98	-
6/7/99	-
4/16/00	-
6/10/01	23,493

Exhibit III

IDAHO POWER
An IDACORP Company

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

JAMES C. TUCKER
Senior Attorney

October 18, 2001

J. William McDonald
Regional Director
U.S. Bureau of Reclamation
Pacific Northwest Region Office
1150 N. Curtis Road
Suite 100
Boise, Idaho 83706-1234

D. Robert Lohn
Northwest Regional Administrator
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115-0070

Re: ESA § 7 Consultation – BOR projects in Snake River Basin above the HCC.

Gentlemen:

The Idaho Power Company (Company) continues to monitor ESA and related resource issues as they develop in Idaho and the Northwest. In this context, the Company has reviewed the interim biological opinion issued by the National Marine Fisheries Service (NMFS) on Bureau of Reclamation (Reclamation) projects in the upper Snake River.[1] We understand that this biological opinion expires in March 2002 and that Reclamation is preparing to re-initiate consultation on the continuing operations of the upper Snake Reclamation projects. Our review of the interim biological opinion indicates that NMFS included several references regarding the effects of the Hells Canyon Complex (HCC) on water quality and ESA-listed anadromous fisheries. These references and many of the conclusions that NMFS draws from them are inaccurate and are based on now-dated and incomplete science. While the Company expects to address these inaccuracies in continuing discussions it is having with NMFS and the Federal Energy Regulatory Commission (FERC) on ESA issues relating to the HCC, the Company is concerned that this may not result in correcting the inaccuracies in the context of the ongoing consultation between Reclamation and NMFS on the upper Snake River Reclamation projects. For that reason, the Company is submitting with this correspondence data and materials that address the NMFS inaccuracies in the interim May 2, 2001 Reclamation biological opinion.[2]

[1] *Biological Opinion – U.S. Bureau of Reclamation Operations and Maintenance of its Projects in the Snake River Basin above Brownlee Dam from Date Issued through March 2002* (NMFS 5/02/01).
[2] This material is attached as Attachment # 1.

45

The Company further understands that the intent of the current consultation effort is to reach a long-term agreement that would facilitate the provision by Idaho interests of 427,000 acre feet, and perhaps more, of Idaho storage water annually to augment flows in the lower Snake River to help meet the flow targets at Lower Granite established by the 1995 Federal Columbia River Power System (FCRPS) biological opinion (and continued by the 2000 FCRPS biological opinion). This long-term agreement is to be a part of a larger Idaho agreement, negotiated in the context of the Snake River Basin Adjudication (SRBA) mediation, to resolve all pending tribal water right claims, and Endangered Species Act (ESA) and Clean Water Act (CWA) issues associated with the management of Idaho's water resources.

The Company has been, and continues to be, a participant in the SRBA mediation and remains hopeful that a comprehensive agreement can be reached in that forum on these issues of importance to Idaho and the region. The Company supports Reclamation's efforts to reach agreement on the upper Snake River issues, but cautions that an agreement on how Reclamation facilities may be utilized to assist with downstream ESA issues should not be negotiated without input from and consideration of all interests that may be impacted by such an agreement.

In May of 2000, the Company advised Reclamation, as well as Idaho water managers, that the storage and use of water from Idaho reservoirs for flow augmentation purposes, as then authorized by the Idaho Legislature, might under certain circumstances injure the Company's water rights.[3] The Company remains concerned about the potential impact that a long-term agreement providing for the use of upper Snake River storage water for downstream flow augmentation may have on the Company's water rights and certain contract rights it has with the United States regarding certain Reclamation reservoir operations in Idaho.

One such contract is dated June 15, 1923 (U.S. contract I1r-733). This 1923 contract entitles the Company to the use of 45,000 acre-feet of primary storage capacity and 255,000 acre-feet of secondary storage capacity in American Falls Reservoir.[4] 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.[5] At various times since the execution of the 1923 contract, the Company's

[3] A copy of the Company's May 9, 2000 correspondence is attached as Attachment 2.
[4] The Company referred to this contract, and the storage rights granted to the Company, in a letter dated October 23, 1996 to the Idaho Department of Water Resources in connection with the filing of numerous SRBA claims relating to American Falls. A copy of that letter is attached. As that letter reflects, the Company had anticipated that issues relating to the Company's rights at American Falls would be resolved through the SRBA process. The prospect of a long-term agreement which may affect upper Snake reservoir operations makes it necessary for the Company to raise this issue in these negotiations.
[5] See: *Memorandum Decision*, In the Matter of Permit Nos. 01-2041 and 01-2065 in the Name of Idaho Power Company, Idaho Department of Water Administration, April 21, 1971.

use of the 255,000 acre-feet of secondary storage has been affected by subsequent contracts with the United States as well as by a general Company policy of coordinating the development of hydropower on the Snake River with the corresponding development and use of that resource for irrigation purposes. Nevertheless, the Company's rights and entitlements under the 1923 contract remain valid and enforceable[6], and in critically short water years, such as 2001, the ability of the Company to call on the reservoir to increase downstream flows for power generation is of substantial value to the Company's customers.[7]

We understand that in the current upper Snake River consultation discussions that Reclamation may seek to change the manner in which the upper Snake River Federal reservoirs, such as American Falls, will be operated to facilitate the prospective use of the water stored in those reservoirs for flow augmentation in the lower Snake River to mitigate for the impact of the lower Snake Federal projects. Because the Company believes that such changes in the operations of the reservoirs and use of the stored waters in the upper Snake River will significantly affect its vested water and contract rights, the Company requests that Reclamation and the other participants in the upper Snake discussions include the Company in any discussions related to the use of upper Snake River storage water for flow augmentation purposes. Only through inclusion in the process can the Company try to insure that its rights are considered and protected in any agreement that may be reached.

We trust the enclosed information on HCC will be useful in the context of the development of a new biological opinion on the upper Snake BOR projects, and that you share our view that the Company's participation in those ongoing discussions will inure to the benefit of all. If you have any questions, please contact the undersigned.

Sincerely,

James C. Tucker

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

[6] Paragraph 17 of the 1923 Contract provides that for the purposes of operation and maintenance charges to be paid by the Company, each acre-foot of secondary storage capacity shall be considered the equivalent of 7/20ths of an acre-foot of primary storage capacity. The Company has been paying, and continues to pay, annual project operation and maintenance charges on its secondary storage capacity rights.

[7] Because this is a critically short water year, the Company is placing Reclamation on notice, through separate correspondence, of its intent to exercise its contract right to such portion of the 255,000 acre-feet of secondary storage capacity as may be necessary to meet the specified flows at Twin Falls (¶ 21, 1923 Contract.)

Exhibit JJJ

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

TO	Senior Attorney	
1000		
1050		
1010		
3000		

CONTROL #: V-(6[illegible]
FOLDER #:

October 18, 2001

(2)

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 (Hanger)
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.

NC2.
P...10

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 I1r-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 KKK

United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Region
1150 North Curtis Road, Suite 100
Boise, Idaho 83706-1234

IN REPLY
REFER TO:
PN-3030
ADM-1.10

DEC 3 1 2001

Mr. James C. Tucker
Idaho Power Company
PO Box 70
Boise ID 83707

Subject: American Falls Reservoir Storage and Flow Augmentation

Dear Mr. Tucker:

On October 18, 2001, you sent a letter to Jerry Gregg regarding water releases from Cascade Dam; a second letter to me regarding the 1923 contract between the Bureau of Reclamation (Reclamation) and Idaho Power Company (Company) for supplemental storage in American Falls Reservoir; and a third letter to Bob Lohn of the National Marine Fisheries Service (NMFS) and me regarding Reclamation's ongoing consultation with NMFS concerning flow augmentation releases. We are responding separately about releases from Cascade Dam, and have asked NMFS to respond to the Company's concerns about water quality issues in the first paragraph of your letter to both NMFS and Reclamation. This letter will respond to the remaining issues.

Reclamation is currently in the process of researching the 1923 contract in order to best understand the nature of the Company's rights to secondary storage in American Falls Reservoir. This is a complex issue, and we think a careful approach is best. We will advise you when we have finished our research, but anticipate that it may be a few months.

As you know, on November 7, 2001, Reclamation submitted to NMFS a Biological Assessment (Assessment) on the Operation of Reclamation Projects above Brownlee Dam. You received a draft of the Assessment, and participated in discussions on the Assessment with water users and State representatives. While Brownlee operations are not a subject of the Assessment, the operations of Brownlee Dam can affect the delivery of Reclamation's flow augmentation water. As such, and in light of the Company's status as a party to the mediated water rights settlement negotiations for the Nez Perce Reservation, (due to the Company's status as an objector to the reserved water rights filings made on behalf of the Tribe) we will treat the Company the same as the State of Idaho and irrigation water users in future activities relating to NMFS anticipated Biological Opinion.

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

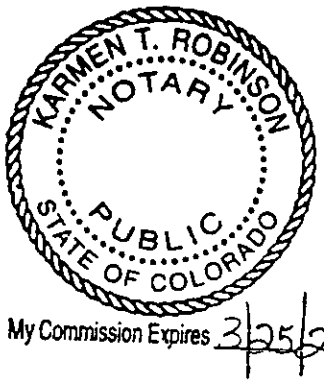
cc: Ms. Ann Klee
Counselor to the Secretary
United States Department of the Interior
1849 C Street, NW
Washington DC 20240-2001

Mr. Bob Lohn
Regional Administrator
National Marine Fisheries Service
7600 Sand Point Way, Building 1
Seattle WA 98115
(ea. w/cy of incoming)

DATED this 4th day of October, 2010.

David A. Jarvis

SUBSCRIBED AND SWORN to before me this 4th day of October, 2010



My Commission Expires 3/25/2013

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