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DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG (ISB No. 2207)
Deputy Attorney General
Chief, Natural Resources Division

DAVID I. STANISH (ISB No. 7310)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

Counsel for the State of Idaho

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	)	(American Falls Hydropower Storage
	)	Subcase)
	)	
	)	THIRD AFFIDAVIT OF DAVID I.
	)	STANISH
	)	

State of Idaho)
)ss
County of Ada)

DAVID I. STANISH, being first duly sworn, deposes and states:

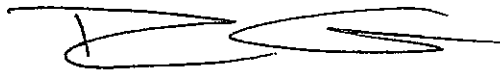
1. I am a competent adult over the age of eighteen years, and the statements made herein are based upon my own personal knowledge of the events described.
2. I am a deputy attorney general assigned to the Snake River Basin Adjudication.

3. Attached to this affidavit are true and correct copies of the following documents:

Exhibit 59 Excerpts from Glossary, United States Bureau of Reclamation,
<http://www.usbr.gov/library/glossary> (last visited Dec. 7, 2010);
and

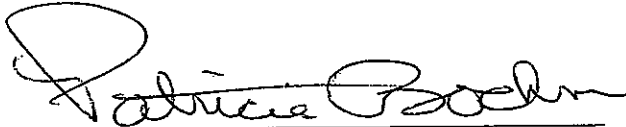
Exhibit 60 Letter from John Rosholt, Attorney, American Falls Reservoir
District, to American Falls Spaceholder Organizations (Mar. 12,
1976).

4. Further your affiant sayeth naught.



DAVID I. STANISH
Deputy Attorney General
Natural Resources Division

Subscribed and sworn (or affirmed) to before me, a notary public in and for the State of
Idaho this 7th day of December 2010.



Notary Public for Idaho
Residing at Boise ID
My Commission expires: 2/5/16

CERTIFICATE OF SERVICE

I certify that on this 7th day of December 2010, I caused to be served the original and copies of the State of Idaho's **THIRD AFFIDAVIT OF DAVID I. STANISH** on the following persons by the methods indicated:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
253 THIRD AVENUE NORTH
PO BOX 2707
TWIN FALLS, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to:

IDAHO POWER COMPANY
Represented by:
JAMES C TUCKER
IDAHO POWER CO
PO BOX 70
BOISE, ID 83707

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile:
- ☐ Statehouse Mail

IDAHO POWER COMPANY
Represented by:
ADAM T. DEVOE
BROWNSTEIN HYATT ET AL
410 17TH STREET, SUITE 2200
DENVER, CO 80202

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
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- ☐ Facsimile:
- ☐ Statehouse Mail

AMERICAN FALLS RESERVOIR
Represented by:
C THOMAS ARKOOSH
301 MAIN ST
PO BOX 32
GOODING, ID 83330

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ABERDEEN AMERICAN FALLS GWD
BINGHAM GWD
BONNEVILLE JEFFERSON GWD
CAREY VALLEY GWD
IGWA INC
JEFFERSON CLARK GWD
MADISON GWD
MAGIC VALLEY GWD
NORTH SNAKE GWD
Represented by:

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- ☐ Statehouse Mail

CANDICE MCHUGH
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHTD.
101 CAPITOL BLVD., STE. 208
BOISE, ID 83702

A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT
FALLS IRRIGATION DISTRICT

Represented by:

ROGER D LING
615 H ST
PO BOX 396
RUPERT, ID 83350-0396

☒ U.S. Mail, postage prepaid

☐ Hand Delivery

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NORTH SIDE CANAL CO LTD
TWIN FALLS CANAL COMPANY
MILNER IRRIGATION DISTRICT

Represented by:

TRAVIS L THOMPSON
113 MAIN AVE W, STE 303
PO BOX 485
TWIN FALLS, ID 83303-0485

☒ U.S. Mail, postage prepaid

☐ Hand Delivery

☐ Federal Express

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MINIDOKA IRRIGATION DISTRICT

Represented by:

W KENT FLETCHER
1200 OVERLAND AVE
PO BOX 248
BURLEY, ID 83318

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☐ Facsimile: _____

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USDI BUREAU OF RECLAMATION

Represented by:

US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC O33
BOISE, ID 83724

☒ U.S. Mail, postage prepaid

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UNITED STATES OF AMERICA
REGIONAL DIRECTOR PN REGION
BUREAU OF RECLAMATION PN-3100
1150 N CURTIS RD STE 100
BOISE, ID 83706-1234

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IDWR DOCUMENT DEPOSITORY
PO BOX 83720
BOISE, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
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- ☐ Facsimile: _____
- ☒ Statehouse Mail

DAVID W. GEHLERT
ASSISTANT ATTORNEY GENERAL
ENV'T & NAT'L RESOURCES
UNITED STATES DEP'T OF JUSTICE
1961 STOUT STREET, 8TH FLOOR
DENVER, CO 80294

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☐ Statehouse Mail

AMERICAN FALLS SPACEHOLDERS
Represented by:
JERRY R. RIGBY
25 N 2ND E
PO BOX 250
REXBURG, ID 83440-0250

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☐ Statehouse Mail



DAVID I. STANISH
Deputy Attorney General

Excerpts from Glossary, United States Bureau of Reclamation,
<http://www.usbr.gov/library/glossary> (last visited Dec. 7, 2010)

EXHIBIT 59

TO

THIRD AFFIDAVIT OF DAVID I. STANISH

Glossary

Listed alphabetically below are definitions for terms commonly used by the Bureau of Reclamation. Clickable alphabet links have been provided at the beginning and end of the glossary to aid in searches. Also, the "FIND" function on your browser's toolbar can be used to search for specific terms. Terms that are used within definitions of other terms are linked to their own definitions.

If you have a question, a comment, a suggestion, can't find the term you are looking for, disagree with a definition, and/or have a term that you would like to see defined, please [contact us via e-mail](#). thanks!

[A](#) | [B](#) | [C](#) | [D](#) | [E](#) | [F](#) | [G](#) | [H](#) | [I](#) | [J](#) | [K](#) | [L](#) | [M](#)
[N](#) | [O](#) | [P](#) | [Q](#) | [R](#) | [S](#) | [T](#) | [U](#) | [V](#) | [W](#) | [X](#) | [Y](#) | [Z](#)

A

A - apparent trace.

A&E (A/E) - architectural and engineering.

AAC - All American Canal.

AAHU - average annual habitat units.

AAM - annual arithmetic mean.

AAR - [alkali-aggregate reaction](#).

AB - Assembly Bill.

ABC - [Association of Boards of Certification](#).

Aberrant. [Atypical](#), departing from the normal type or structure.

Abiotic. The absence of living organisms.

Abrasion. Wearing away of surfaces by [friction](#).

Absolute pressure. [Atmospheric pressure](#) plus [gauge pressure](#).

Absorbed dose. The amount of a chemical that enters the body of an exposed organism.

Absorbed water. Water held mechanically in a soil or rock mass and having physical properties not substantially different from ordinary water at the same temperature and pressure. See

ACES - Automated Coastal Engineering System.

ac-ft - acre-foot, acre-feet.

ACGIH - American Conference of Government Industrial Hygienists.

ACHP - Advisory Council on Historic Preservation.

Acid. A substance that has a pH value between 0 and 7. **ACID** - Anderson-Cottonwood Irrigation District.

Acid rain. Precipitation which has been rendered acidic by airborne pollutants.

Acidic. The condition of water or soil which contains a sufficient amount of acid substances to lower the pH below 7.0.

Acidified. The addition of an acid (usually nitric or sulfuric) to a sample to lower the pH below 2.0.

ACR - alkali-carbonate reaction.

Acre (ac). Unit for measuring land, equal to 43,560 sq. ft., 4840 sq. yds., or 160 sq. rds.

Acre-foot (ac-ft). A term used in measuring the volume or amount of water needed to cover 1 acre (43,560 square feet) 1 foot deep (325,851 gallons or 1,233.5 cubic meters).

ACRM - Assistant Commissioner-Resources Management.

Activated carbon. Adsorptive particles or granules of carbon usually obtained by heating carbon (such as wood). These particles or granules have a high capacity to selectively remove certain trace and soluble materials from water.

Active capacity. The reservoir capacity normally usable for storage and regulation of reservoir inflows to meet established reservoir operating requirements. It extends from the highest of either the top of exclusive flood control capacity, the top of joint use capacity, or the top of active conservation capacity, to the top of inactive capacity. It is also the total capacity less the sum of the inactive and dead capacities. The reservoir capacity that can be used for irrigation, power, municipal and industrial use, fish and wildlife, recreation, water quality, and other purposes.

Active conservation capacity (active storage). The reservoir capacity assigned to regulate reservoir inflow for irrigation, power, municipal and industrial use, fish and wildlife, navigation, recreation, water quality, and other purposes. It does not include exclusive flood control or joint use capacity. It extends from the top of the active conservation capacity to the top of the inactive capacity (or dead capacity where there is no inactive capacity).

Active earth pressure. The minimum value of earth pressure. This condition exists when a soil mass is permitted to yield sufficiently to cause its internal shearing resistance along a potential failure surface to be completely mobilized.

Active fault. A fault which, because of its present tectonic setting, can undergo movement from time to time in the immediate geologic future. A fault, which has moved during the recent geologic past (Quaternary) and, thus, may move again. It may or may not generate earthquakes. See capable fault.

Active transport. An energy-expending mechanism by which a cell moves a chemical across the cell membrane from a point of lower concentration to a point of higher concentration, against

Letter from John Rosholt, Attorney, American Falls Reservoir
District, to American Falls Spaceholder Organizations (Mar. 12,
1976)

EXHIBIT 60

TO

THIRD AFFIDAVIT OF DAVID I. STANISH

PARRY, ROBERTSON, DALY & LARSON
LAWYERS

THE IDAHO FIRST NATIONAL BANK BUILDING

P.O. BOX 525

TWIN FALLS, IDAHO 83301

R. P. PARRY
T. M. ROBERTSON
JOHN H. DALY (1913-1988)
BERT LARSON
C. G. MCINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE

TELEPHONE
(208) 733-3722

OUR FILE NUMBER

March 12, 1976

Ms. Patricia Woolf

Rudy Canal Company
Harrison 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

Earl Cory

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: Placeholder 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 placeholder organizations that have successfully passed elections on the American Falls Replacement Program Placeholder 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 placeholder 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.

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March 12, 1976

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 omitted 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

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March 12, 1976

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.

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

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March 12, 1976

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.

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March 12, 1976

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.

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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

Attorney for American Falls
Reservoir District

JAR/1kb

cc: Board Presidents and Secretaries
Ray Andrus
Lloyd Olson