

Orr Affidavit

Exhibit 35

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OCT 19 2009

DEPARTMENT OF
WATER RESOURCES

Letter from A.P. Davis, Director of the U.S.
Reclamation Service, to Idaho Power Company
(Nov. 2, 1920)

Nov. 2, 1920.

The Idaho Power Company,
71 Broadway,
New York City.

Gentlemen:

As a result of the recent conference with the officers of your company in New York City, the following proposal is submitted as a basis for a contract between the United States and your company for all or part of your power property and rights at American Falls, Idaho.

It is a well recognized fact that the welfare and growth of the state is dependent primarily upon the development of additional lands by irrigation and no part of the state offers better or larger possibilities in this respect than the Snake River Valley.

The water resources of this river are, however, entirely inadequate to water all of the lands susceptible of irrigation and very large fertile areas of southern Idaho will have to remain forever in a desert state due to lack of water. The time has already passed when the natural flow of the river was sufficient to irrigate the lands under cultivation along its shores and storage reservoirs have been recognized as a necessity for many years past.

Hydrometric studies indicate that the water supply of the Snake River when adequately controlled by reservoirs, will furnish a reliable supply to all lands now under cultivation and about 400,000 acres additional, but without additional storage no new areas at all can be made productive and habitable and even the present projects will suffer occasional serious losses. The power rights claimed by your company at American Falls will, if perfected and maintained, prevent absolutely the development of further storage resources on Snake River, and consequently irrigation in southern Idaho. As is quite natural, irrigation development has followed the course of least resistance until a time has come when it is no longer possible to reach land with elementary systems, as in the past, and it now becomes necessary to resort either to pumping systems or extremely long gravity canals or other heavy construction work, depending upon the nature and topography of the country.

One of the most desirable projects yet to be undertaken in the state, is what is known as the Minidoka North Side Pumping Unit, an area of about 115,000 acres of excellent land lying to the north and west of the present Minidoka project and already supplied with transportation facilities. The method of irrigating this tract would be very similar to that employed on the successful Minidoka South Side Pumping Unit where electrically operated pumps lift water to a maximum height of 90 feet for the irrigation of about 50,000 acres. For the operation of this new unit, or project, there will be required the production of about 40,000 horse power of electrical energy.

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The purchase or condemnation of the entire winter power right at American Falls is necessary to the complete development of the irrigation resources of the state in order to enable us to store and save the winter flow, which would otherwise go down to the Snake River Canyon and be wasted so far as irrigation is concerned. Each second-foot of water allowed to pass the American Falls Reservoir and waste down Snake River during the non-irrigation season, means that about 80 acres of land in the Snake River Valley will be deprived of irrigation and condemned to remain perpetually arid and to that extent would restrict the future growth of the state, and also the market of your company for power.

There are many points, however, both above American Falls and below Thousand Springs, and also on other nearby streams where a large additional amount of power could be developed without requiring the waste of any water that could be used for irrigation. We are convinced that the ultimate development of irrigation in the Snake River Valley will require the elimination of the entire winter power right at American Falls and the storage of the entire winter flow and any plan that contemplates the purchase of less than the entire right is merely a temporary expedient.

We hoped to be able to agree on a contract for the purchase of the entire right at this time, but understand that your objections to this plan are much more serious than they would be if we took at the present time only that part of the right over 2500 second-feet. We have suggested a provision of the following effect:

"That after 5 years from the date of this contract the United States may during the non-irrigation season, or any part thereof, at its option, upon giving 30 days' written notice to the contractor, deliver to the contractor at the contractor's American Falls power plant, or at such other point as may be mutually agreed upon by the parties, 192,000 kilowatt hours of electric energy per day in lieu of the contractor's said reserved water right of 5000 acre-feet per day, which amount of electric energy will be accepted by the contractor as the equivalent of the contractor's said reserved right and the United States may then store the said reserved 5000 acre-feet of water per day in any available reservoir or reservoirs or may store part of said water and use the balance thereof for generating electric power. It is understood that the non-irrigation season during which electric energy may be substituted for water extends from October 1st of any year until May 1st of the succeeding year. Should the United States be ready and willing to deliver the said 192,000 kilowatt hours of electric power per day but the contractor be unable or unwilling to receive the full amount thereof, the obligation of the United States will be discharged by the delivery of such lesser amount as the contractor is able and willing to receive. In order to meet daily peaks in the contractor's load, the contractor may draw power during such periods of substitution of power for water at a maximum rate up to but not exceeding

15,000 kilowatts provided the total amount taken in any period of 24 hours does not exceed the said 192,000 kilowatt hours."

If the foregoing provision is included in the contract, we are willing to limit our purchase or condemnation for the present to that part of the power right over 2500 second-feet or over 5,000 acre-feet per day but without such a provision we would not feel justified in agreeing to take less than the full right.

Without such a provision a contract leaving 2500 second-feet of the American Falls right to the company might result in the construction of additional power plants at points where it would later become necessary to condemn and close down the plants in order to save the water for irrigation, which would be an economic waste and would place a great additional burden on the irrigators of future reclamation projects, without any benefit to the consumers of power or any one else.

We expect to construct a large power plant at American Falls to create the necessary power during the irrigation season for pumping water on the proposed North Side Extension of the Minidoka project. This plant we expect will be connected with our storage dam and will, therefore, have a much higher head most of the time than is available at your American Falls plant, so by operating our plant in the winter we could deliver to you an equivalent amount of power with very much less water and this would offer an opportunity to save water when additional storage capacity becomes necessary to the further development of the large areas of arid land available in the Snake River Valley.

If the provision above quoted is included in the contract we are willing to limit the contract to the purchase of that part of the right over 2500 second-feet or 5000 acre-feet per day, allow you to participate in the reservoir to the extent of 25000 acre-feet of storage capacity in part payment and pay you \$250,000 in cash, and with the consent of the Federal Power Commission, are willing to allow you to connect your penstocks with our dam so that you can utilize the increased head and generate a much larger amount of summer power than would otherwise be possible.

The privileges of connecting with our dam and of participating in the storage capacity of the reservoir are ones which we would not be justified in allowing unless we have a contract including the provision quoted above.

This connection would give a largely increased summer capacity to your American Falls plant and materially increase the value of the plant and the storage can be used by the company to fill in numerous small depressions in the water supply at a number of different power plants and

is likely to enhance the value of the various power plants in the aggregate many times more than the cost of the storage and we could not become a party to an arrangement which might add greatly to the value of property which we later might have to condemn unless we had some provision which would give us an opportunity to save the water without danger of being obliged to condemn additional power plants.

Under the offer made in this letter we would take over the company's land under the proposed dam and reservoir and the two small obsolete plants known as the Island plant and the Westside plant, the western portion of the present dam and spillway up to and including the intake to the Island plant, and would build our plant on the west side of the river. This would leave you the East side plant and the foundations for increasing the plant to several times its present capacity.

We are willing to regulate your daily peaks by providing for purchasing your right above 5,000 acre-feet per day instead of 2500 second-feet and will allow you to draw the water to which you are entitled as best suits your requirements, provided you do not exceed the 5,000 acre-feet in any one calendar day.

Very truly yours,

A. P. DAVIS

Director.

Approved:

JOHN BARTON PAYNE

Secretary of the Interior.