

Orr Affidavit

Exhibit 70

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DEPARTMENT OF
WATER RESOURCES

Contract between the United States and Idaho
Power Company for conservation of Snake
River water and furnishing transmission service
(Oct. 1, 1934)

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DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

CONTRACT DATED

Oct. 1, 1934

with

IDAHO POWER COMPANY

(Conservation of Snake River
Water & Furnishing of
Transmission Service)

(Symbol Ilr-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 foregoing 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 Fayette 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)

IDAHO POWER COMPANY

Attest:

By (sgd) K. M. Robinson
President

(Sgd) James L. Boone
Secretary

Memo Sheet

Idaho Power Company - American Falls storage May 1, 1929-
Oct. 1, 1938, Lease Apr. 23, 1929, Ilr-543 [suspended by
contract Oct. 1, 1934, Ilr-801]
Idaho Power Co. and American Falls Reservoir District
lease June 1, 1931, Ilr-656
supplemental lease Oct. 31, 1932, Ilr-656
supplemental lease Dec. 1, 1933, Ilr-656
supplemental lease Nov. 1, 1934, Ilr-656
[expired Oct. 31, 1935]